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TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS,
NINTH CIRCUIT.

No. 48

SOUTHERN PACIFIC COMPANY, PLAINTIFF IN ERROR,

vs.

ASA M. HAMILTON, DEFENDANT IN ERROR.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF NEVADA.

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J. H. MacMILLAN AND
WILLIAM WOODBURN,
Attorneys for Defendant in Error.

U. S. CROCKER COMPANY, P. F.

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Records of Circuit
Court of Appeals

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UNITED STATES CIRCUIT COURT OF APPEALS,
NINTH CIRCUIT.

No.

SOUTHERN PACIFIC COMPANY, PLAINTIFF IN ERROR,

vs.

ASA M. HAMILTON, DEFENDANT IN ERROR.

PETITION FOR WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEVADA.

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1 In the District Court of the State of Nevada, held in
and for the County of Humboldt.

ASA M. HAMILTON, Plaintiff,
vs.
SOUTHERN PACIFIC COMPANY (a corporation), Defendant. }

Plaintiff complains and alleges, that ever since the 1st day of December, A. D. 1888, said defendant has been and now is a corporation, duly organized and existing under and by virtue of the laws of the commonwealth of Kentucky.

That during all the times herein mentioned said defendant, the Southern Pacific Company, was the lessee of a certain railroad known as the Central Pacific Railroad, together with the track, rolling stock and other appurtenances thereto belonging, and that at the times herein mentioned said Southern Pacific Company was a common carrier of passengers and freights for hire upon and over said railroad between the city of Ogden, Territory of Utah, and the city of Sacramento, State of California.

That the lessor of said railroad was and is the Central Pacific Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of California.

2 That on the 11th day of December, A. D. 1888, the defendant Southern Pacific Railroad Company, in consideration of the sum of sixty-four dollars paid to it by plaintiff therefor, undertook and agreed, as such common carrier, to safely transport and convey the plaintiff from the city of Omaha, Nebraska, to the city of San Diego, California, as a passenger, and the plaintiff thereupon entered one of the cars of the regular passenger train of defendant for the purpose of being safely transported and carried by defendant from the said city of Ogden, Territory of Utah, to the said city of Sacramento, State of California, and that he entered upon and into said car by reason of his payment for and possession of his said ticket therefor, and with the knowledge and consent of defendant, and then and there became and was a passenger on board the said car and train of defendant.

That, at the time plaintiff so entered into and upon defendant's said car and train, plaintiff was going to the city of Portland, Oregon, on business of urgency and great importance to plaintiff.

That at the time mentioned, soon after plaintiff had so entered into and upon said car and train of defendant, the conductor of said train and car, then working, ordering and conducting the same, and then and there being the agent and employee of defendant under the order and instruction of defendant, greatly harassed, disturbed and insulted said plaintiff by denying his

right to be transported and conveyed to his said destination according to his right.

3 That these acts of the agent of defendant, whose name is unknown to plaintiff, were had and done at unreasonable hours of the night, as well as during the day, and in presence of a multitude of people, greatly to the shame, disgrace and indignity of plaintiff, and such acts were without cause, and had forcibly, willfully, maliciously, scandalously and contemptuously, as against this plaintiff. That said acts consisted principally of the open assertion that plaintiff had no right and no ticket for transportation as aforesaid, and were accompanied by an assault of the character aforesaid in and upon the person of plaintiff, committed by said agent of defendant.

That the acts above complained of, as against the plaintiff, were by said agent of defendant carried on continuously until the train of defendant, being still running, the town of Rye Patch, Humboldt county, Nevada, was reached, when the said agent of defendant, continuing the said wrongful, unlawful, willful and malicious conduct as aforesaid, procured the assistance of one other man, whose name is unknown to plaintiff, and while plaintiff was seated in the said car and train according to his right the said agent and his assistant aforesaid did, with force and arms, commit an assault in and upon the person of plaintiff, and did then and there, at the time and place aforesaid, attempt to unlawfully and forcibly eject this plaintiff from said car and train, where he had a right by reason of the facts aforesaid so to be.

4 That the said agent and agents of defendant, continuing the said wrongful, unlawful, forcible, willful and malicious acts above complained of, and when said train had reached the town of Lovelock, Humboldt county, Nevada, and by order of defendant, did procure the assistance of two other men heavily armed, whose names are unknown to plaintiff, who did at the said place, and on or about the twenty-sixth day of January, A. D. 1889, enter in and upon said car, and by force and intimidation and with arms did remove, eject and drive this plaintiff from and off said car and train, in irons, and did convey him to the common jail of said town and county, all of which acts were had and done by the agents of defendant, under the order of defendant, in presence of a multitude of people, forcibly, willfully, maliciously, scandalously and contemptuously, to the great shame, scandal, disgrace, indignity and damage of this plaintiff, and did then and there willfully and maliciously assault said plaintiff, and then and there grossly neglected and treated with wanton contempt the rights of this plaintiff above written.

Plaintiff alleges that, by reason of the said wrongful and unlawful act of defendant, and its agents, and by reason of his

being so ejected from and put off said train and cars as aforesaid, he was prevented from making and completing his said journey to said city of Portland, Oregon, and from attending to his said business, which was greatly injured thereby, and plaintiff was thereby put to great loss of time, inconvenience, expense and damage, to wit, in the sum of one thousand dollars.

Plaintiff further alleges that, by reason of said wrongful and unlawful acts of defendant, its said agents, servants and employees, in so assaulting and ejecting plaintiff from
 5 its said car and train at the time and in the manner aforesaid, plaintiff was prevented from continuing his said journey, was scandalized, disgraced, shamed and injured in his name, greatly and wrongfully, and suffered greatly in body and mind by reason thereof, and that such injury was to his damage in the sum of one hundred thousand dollars.

Wherefore, plaintiff demands judgment against defendant for one hundred thousand dollars, and his costs herein.

J. H. MACMILLAN and
 JNO. F. ALEXANDER,
Attys. for Plff.

6 STATE OF NEVADA, }
 County of Humboldt. } ss.

Asa M. Hamilton, being duly sworn, deposes and says that he is the above-named plaintiff, that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he believes it to be true.

ASA M. HAMILTON.

Subscribed and sworn to before me this 13th day of April, 1889.

L. F. DUNN, *Clerk.*

7 In the District Court of the State of Nevada, in and for the County of Humboldt.

ASA M. HAMILTON, Plaintiff, <i>vs.</i> SOUTHERN PACIFIC COMPANY (a corporation), Defendant.	}	Action brought in the District Court of the State of Nevada, in and for the county of Humboldt, and the complaint filed in the office of the Clerk of said District Court on the 13th day of April, A. D. 1889.
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The State of Nevada sends greeting to Southern Pacific Company, a corporation, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the District Court of the State of Nevada, in and for the county of Humboldt, and

to answer the complaint filed therein with the Clerk of said Court within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county ; or, if served out of this county but in this judicial district, within twenty days; otherwise, within forty days ; or judgment by default will be taken against you, according to the prayer of said complaint.

Said action is brought to recover judgment of and from you in the sum of one hundred thousand dollars damages suffered by plaintiff by reason of the unlawful, wrongful, forcible and malicious acts and conduct of you and your agent, all of which were had and done upon and against plaintiff under your
8 order, and particularly as follows: Plaintiff alleges that on or about the 26th day of January, 1889, within the State of Nevada, he was a passenger in and upon one of the regular trains run by you, defendant, as a common carrier of passengers and freight for hire, within the State of Nevada. That, at the time mentioned, plaintiff was, as of right, a passenger on board your said train, and with your knowledge and consent, by reason of the facts that he had theretofore paid for and received from you his certain ticket for safe transportation of himself from Omaha, Nebraska, to the city of San Diego, California. That while plaintiff, was being by you transported and conveyed between the said points, according to his right, and his ticket therefor, and while your said train was, at the time mentioned, in transit in the county of Humboldt, State of Nevada, your agents and employees, by your order, did with force and arms commit a violent and grievous assault, wrongfully, unlawfully, willfully and maliciously, and did forcibly eject and drive this plaintiff from and off your said train, where he had a right to be, and did treat with wanton and malicious contempt the rights of plaintiff above written, and did cause him to be placed in irons, and removed in like manner as a common felon, from said train to the common jail, all of which acts were done in presence of a multitude of people, greatly and wrongfully to the shame, disgrace, indignity and injury of the plaintiff and his fair name. That by reason thereof plaintiff suffered greatly in body and mind, and to his injury in the sum of one hundred thousand dollars.

All of which will more fully appear by reference to said
9 complaint, a certified copy of which accompanies this summons, and is made a part hereof.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, said plaintiff will take judgment according to the prayer of the said complaint.

Given under our hand this 13th day of April, A. D. 1889.

JOHN F. ALEXANDER AND
J. H. MACMILLAN,

Attys. for Plff.

Filed October 25, 1889.

T. J. EDWARDS,
Clerk U. S. Cir. Court, Dist. Nevada.

10 The following is the return on the summons :

I hereby certify and return make that I have received the within summons affixed to a copy of the complaint certified, in the case of *Asa M. Hamilton, plaintiff, vs. Southern Pacific Company, a corporation, defendant*, and doing business within this State as a common carrier of freight and passengers for hire, and that I served the same personally upon said corporation defendant by exhibiting the original complaint and summons to J. L. May, an agent of said defendant at Winnemucca, Humboldt county, Nevada, on the 13th day of April, A. D. 1889, and at the same time and place I delivered to J. L. May, an agent as aforesaid, a copy of the original summons, attached to a certified copy of the complaint in the within-entitled action.

Witness my hand this 13th day of April, A. D. 1889.

F. M. FELLOWS,
Sheriff of Humboldt Co., Nevada.

11 In the District Court of the State of Nevada, in and for Humboldt County.

ASA M. HAMILTON, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a corporation), Defendant. }
}

Now comes the defendant, Southern Pacific Company, and demurring to the complaint on file herein alleges the following grounds, to wit :

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That it does not appear from said complaint that the plaintiff ever purchased from the Southern Pacific Company, or that the said Southern Pacific Company ever sold to said plaintiff, a ticket entitling him to a passage, or to ride as a passenger, upon any railroad train of the said Southern Pacific Company.

III.

That said complaint is ambiguous, uncertain and unintelligible in this : That it does not appear therefrom whether it is

12 intended to charge the Southern Pacific Company in said action, or the Southern Pacific Railroad Company.

BAKER & WINES,

Attorneys for Defendant.

L. D. McKISICK,

Of Counsel.

Filed October 25, 1889.

T. J. EDWARDS,

Clerk U. S. Circuit Court, District Nevada.

13 In the District Court of the State of Nevada, in and for Humboldt County.

ASA M. HAMILTON, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a corporation), Defendant. }

Petition for Removal.

To the court above entitled:

Your petitioner, Southern Pacific Company, a corporation, and the defendant herein, would most respectfully represent and show to the court the following facts, to wit:

That your petitioner is at this time, was at the date of the commencement of this said action, and at all the times and dates mentioned in the complaint on file herein, a corporation organized, created by and having its corporate existence under and by virtue of the laws of the State or commonwealth of Kentucky, and your petitioner therefore alleges that your petitioner is, and was, at all of said times and dates, a citizen of the State or commonwealth of Kentucky, and is and was, at all of said times and dates, a non-resident of the State of Nevada, and is and was, at

14 all of said times and dates, a resident of said State or commonwealth of Kentucky, and engaged in running and operating a line of railroad, to wit, the Central Pacific Railroad, in and through the State of Nevada, and having agents in said State upon whom all process may and can be served.

Your petitioner would further state, *that* the plaintiff above named, Asa M. Hamilton, is now, and was at all times and dates mentioned in said complaint herein, and at the time of the commencement of this said action, a citizen of the State of Oregon, actually residing and living and having his domicile in said State of Oregon, and is not now, nor was he, at any of the times or dates mentioned in said complaint, a citizen or resident of the State or commonwealth of Kentucky, nor of the State of Nevada.

Therefore your petitioner alleges the fact to be, that at the times, also at the time of the commencement of this action, and

at all the times and dates mentioned in said complaint, the parties to this action were actually citizens of different States, to wit, of the States of Oregon and Kentucky respectively.

Your petitioner would further state and show to the court that this said action was commenced in the above-entitled court against your petitioner, upon the 13th day of April, A. D. 1889, by the filing of a complaint and the issuance of a summons thereon. That said summons was served upon your petitioner upon said 13th day of April, A. D. 1889, in Humboldt county, in said State of Nevada, the county in which said action was originally brought.

Your petitioner would also further show, that this said
15 action or suit is of a civil nature in this, to wit: That it is an action or suit, brought by said plaintiff against your petitioner, to recover a judgment in the sum of one hundred thousand (\$100,000.00) dollars, as damages alleged to have been sustained by said plaintiff, by reason of his having been ejected from and forcibly put off one of the railroad trains of your petitioner, in the said State of Nevada, on or about the 26th day of January, A. D. 1889, the said plaintiff therein, in his said complaint, alleging that he was then and there a passenger upon said train.

Your petitioner would also allege, as appears from said complaint, and to which reference is hereby made, that the amount or sum involved is one hundred thousand dollars, as prayed for in said complaint, and therefore your petitioner alleges the fact to be, that the sum or amount involved in this said action, exclusive of interest and costs, exceeds the sum or value of two thousand (\$2,000.00) dollars.

Your petitioner would further allege and show that, under the law and practice in the above courts, your petitioner would be and is entitled to at least ten (10) days from and after the service of said summons upon your petitioner upon said 13th day of April, A. D. 1889, in which to appear, answer or plead to the said complaint on file herein, and that at the time of the filing of this petition, the time in which your petitioner is required, by the laws of said State of Nevada and by the rules of practice in said State courts, to answer or plead to said complaint, has not expired. That your petitioner refers to the proof
of service of said summons, and hereby makes the
16 same a part of the petition. That your petitioner has not yet appeared or plead in said action.

Your petitioner also for all proper purposes, and for the purpose of showing this said action to be one properly removable to the Circuit Court of the United States, hereby refers to said complaint on file herein.

Your petitioner therefore files herewith its demurrer to said complaint, and submits this its petition for a removal to the

Circuit Court of the United States, and the Ninth Circuit in and for the proper district, and herewith submits and files its bond in the sum of one thousand dollars, conditioned as in such cases made and provided, and respectfully asks this Court to approve the same, and that no further proceedings be had herein in this court.

Respectfully submitted,
SOUTHERN PACIFIC COMPANY,
By BAKER & WINES,
Att'ys for Petitioner.

L. D. MCKISICK,
Of Counsel.

17 STATE OF NEVADA, }
County of Humboldt. } ss.

J. L. Wines, being first duly sworn, says: I am one of the attorneys for the above-named defendant, and as such, and in behalf of and for the use and benefit of said defendant, make this verification. That said defendant is a foreign corporation, and is a non-resident of and now absent from the State of Nevada, in which State affiant is a resident. That I have read the above and foregoing petition and know the contents thereof, and that the same is true of my own knowledge, except as to the matters and things therein stated upon information and belief, and as to these I believe it to be true.

J. L. WINES.

Sworn to before me and subscribed in my presence this the 18th day of April, 1889.

L. F. DUNN, *Clerk.*

I hereby certify that the marginal writings and interlineations in the above and foregoing instrument were made before sworn to or signed.

L. F. DUNN, *Clerk.*

18 In the District Court of the State of Nevada, in and for the County of Humboldt.

ASA M. HAMILTON, Plaintiff, }

vs.

SOUTHERN PACIFIC COMPANY (a corporation), Defendant. }

Bond on Removal.

Know all men by these presents, that the Southern Pacific Company, a corporation, the defendant above named and the principal herein, and M. D. Foley and T. B. Rickey as sureties, are held and firmly bound unto Asa M. Hamilton, the plaintiff in the above-entitled action, in the sum of one thousand

(\$1,000) dollars, lawful money of the United States, for the true payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, firmly, jointly and severally by these presents. Sealed and dated this the 18th day of April, A. D. 1889.

The condition and consideration of the above and foregoing bond is such, that whereas, the above-named and Southern Pacific Company, a corporation, has petitioned, and does herewith submit and file its petition, praying for a removal of the above-entitled action from the State Court in which the same is pending into the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada, and whereas in such cases it is provided that such application to removal shall be accompanied with a bond, and whereas said Southern Pacific Company is desirous of giving such bond. Now, therefore, in consideration of the premises, and of such removal, we, said Southern Pacific Company as principal, and the said M. D. Foley and T. B. Rickey as such sureties, do undertake, promise and agree, to and with the said Asa M. Hamilton, in the said sum of one thousand dollars, that the said petitioner, the Southern Pacific Company, shall enter in the said Circuit Court of the United States, in and for said District, on the first day of its next session a true copy of the record in said suit, or action above entitled, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States, if said Circuit Court shall hold that said suit was improperly or wrongfully removed thereto.

In case such payment of such costs and damages shall be made by said petitioner, then in that event this bond and obligation to be null and void, otherwise to remain in full force and effect.

Witness our hands and seals this the 18th day of April, A. D. 1889.

SOUTHERN PACIFIC COMPANY,
By G. L. LANSING, *Secretary*,
M. D. FOLEY,
T. B. RICKEY.

(S. P. Co.,
Kentucky.)

20 In the District Court of the State of Nevada, in and for Humboldt County.

ASA M. HAMILTON, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a corporation), Defendant. }

Upon receiving and examining certified copies of a petition and bond filed in the above court and cause upon the 18th day of April, 1889, in an application for a removal of said cause

from the above court to the Circuit Court of the United States, in Ninth Circuit, District of Nevada, by the defendant above named, upon the ground that the parties to said action are citizens of different States, and that the defendant is a citizen of the commonwealth of Kentucky, and that the amount involved in said action exceeds the sum or value of two thousand dollars, exclusive of interest and costs, and as at present advised and believing that this is a proper case to be and that the same is removable to said Circuit Court, it is hereby ordered that the said petition and bond be and they are hereby approved, and that no further proceedings in said cause be had in this court.

Done at chambers in Nevada, this the 14th day of May,
21 1889.

A. L. FITZGERALD,
District Judge.

Filed May 14th, 1889.

L. F. DUNN, *Clerk.*

Filed October 25, 1889.

T. J. EDWARDS,
Clerk U. S. Cir. Court,
District Nevada.

22 In the District Court of the State of Nevada, in and for Humboldt County.

ASA M. HAMILTON, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a corporation), Defendant. }

STATE OF NEVADA, }
County of Humboldt. } ss.

L. F. Dunn, being first duly sworn, says: That I received and filed in the above court and cause, upon the 18th day of April, 1889, a petition and bond in an application made by the defendant to remove said cause to the Circuit Court of the United States, Ninth Circuit, District of Nevada, and that I have prepared, at the request of J. L. Wines, certified copies of such petition and bond, and have this 19th day of April, 1889, and in time for the east-bound mail on the Central Pacific Railroad, mailed to the Hon. A. L. Fitzgerald, the Judge of the above court, at his residence in Eureka, Nevada, postage prepaid, said copies of said petition and bond accompanied with an order, of which the annexed order is a copy, with a request that he, said Judge, return to me, as the Clerk of said court, said order

23 when the same shall have been either granted or refused.

That the same was also accompanied by a letter of request from Messrs. Baker & Wines, attorneys for said defendant. I also further state that there has been no term of said court

held in Humboldt county since the commencement of said suit, nor since the service of the summons therein and prior to the time of the filing of said petition and bond for removal.

L. F. DUNN.

Subscribed and sworn to before me this 19th day of April, A. D. 1889.

[SEAL]

SAM'L J. BONNIFIELDER,
Notary Public.

Filed October 25, 1889.

T. J. EDWARDS,
*Clerk U. S. Cir. Court,
District Nevada.*

24 STATE OF NEVADA, }
Humboldt County. } ss.

I, L. F. Dunn, Clerk and ex-officio clerk of the District Court of Nevada in and for the county of Humboldt, do hereby certify that the foregoing are full, true and correct copies of the Complaint, Summons, Return of Service by Sheriff, Demurrer, Petition for Removal to U. S. Circuit Court, Undertaking on Removal, Order of Removal, in the cause entitled *Asa M. Hamilton, plaintiff, vs. Southern Pacific Company, a corporation, defendant*, and of the endorsement thereon, and the same is a true copy of the entire record and all proceedings in said cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this second day of August, 1889.

[SEAL]

L. F. DUNN, *Clerk.*

Filed October 25, 1889.

T. J. EDWARDS,
*Clerk U. S. Circuit Court,
Ninth Circuit and District of Nevada.*

25 In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.

ASA M. HAMILTON, Plaintiff, }
vs. }
SOUTHERN PACIFIC COMPANY, Defendant. }

Now comes the defendant, leave thereto having first been obtained, and for its amended answer to the complaint on file herein denies that the plaintiff, Asa M. Hamilton, upon the 11th day of December, 1888, or at any other time, in so far as the same relates to the transportation or the alleged contract or agreement set up in said complaint, in consideration of the sum of sixty-four dollars, or in consideration of any sum whatsoever, entered into any contract or agreement with said defendant, or that said defendant, as a common carrier, or otherwise,

upon said date, or at all, undertook or agreed to safely, or at all, carry or transport said plaintiff from the city of Omaha, or from any other point or place, to the city of San Diego, or to any other point or place whatever.

Denies that plaintiff, by reason of his payment for, or his possession of, any ticket, or with the knowledge or consent of defendant, became or was a passenger on board the
26 or any train or car of said defendant, or any train or car at all.

Denies that at the time alleged in said complaint, or at the time plaintiff alleges that he was a passenger upon the train of defendant, he, said plaintiff, was going to the city of Portland, or to any place or point, on business of urgency, or denies that the or any conductor of the or any train of defendant, at any time or place, ever, or at all, harassed, disturbed or insulted said plaintiff.

Denies that any thing or things, act or acts, were done or performed, at the time mentioned in said complaint, or at any time, by any agent, servant or conductor of said defendant, at unreasonable hours of the day or night, or at all, or in the presence of a multitude of people, or greatly, or at all, to the shame, disgrace or indignity of said plaintiff.

Denies that any thing or things, act or acts, were done or performed at the time mentioned in said complaint, or at any time, by any agent, servant or conductor of said defendant, without cause, or otherwise, or at all, or that such were done or performed forcibly, willfully, maliciously, scandalously or contemptuously, or at all.

Denies that at the time mentioned in said complaint, or at any time, the or any agent, servant or conductor of said defendant, with an or any assistant, or otherwise, did with force and arms, or otherwise, commit an or any assault in or upon the person of said plaintiff; and denies that any such agent, servant or conductor did, at any time or place, attempt to unlawfully eject said plaintiff from the or any train or car of the said defendant.

27 Defendant, admitting that said plaintiff was removed from train of defendant, in manner and form as hereinafter stated:

Denies that any agent, servant or employee of the said defendant, or that any person or persons under the control of, or in the employ of, said defendant, did upon the 26th day of January, 1889, or at any other time, enter into or upon the or any train or car of defendant, and did, by force or intimidation, or with arms, or otherwise or at all, remove, eject or drive said plaintiff from off of the or any train or car of the said defendant, in irons or otherwise, or in any manner whatever, or at all, or did take or convey said plaintiff to the or any common jail whatever.

Denies that any act or thing in connection with, or in relation to, the removal of plaintiff from off the train of said defendant, as hereinafter admitted, was done or performed by any agent, servant or employee of said defendant.

Denies that any person or persons whomsoever did, at any time mentioned in said complaint, or at all, neglect said plaintiff, or at any time treat with wanton contempt the rights of said plaintiff.

Denies that any person or persons whomsoever, at the time mentioned in said complaint, or while plaintiff was upon the train or car of the defendant, commit any assault upon him, or did wrongfully remove, eject or drive said plaintiff from off of said train or car of defendant.

Denies that by reason of any of the acts or things set up in said complaint, or by reason of the fact that said plaintiff was removed from said train and car, as hereinafter mentioned, the said plaintiff was prevented from attending to his
28 business, or that his business suffered to any extent, or at all.

Denies that said plaintiff was, by reason of the acts and things complained of in said complaint, or by any reason, or from any cause whatever, put to great loss of time, inconvenience, expense or damage in the sum of one thousand dollars, or in any sum whatever.

Denies that by reason of the acts or things complained of in said complaint, or otherwise, or by reason of any thing done or performed by any person whomsoever in relation to, or in connection with, the removal of said plaintiff from said train or car, or by reason of any act or thing whatever, during the time said plaintiff was upon the train and car of defendant, was said plaintiff prevented from continuing his journey; nor was he in any manner thereby scandalized, disgraced, shamed or injured in any way whatever, nor did he, said plaintiff, suffer in body or mind; and denies that said plaintiff was, from any cause whatever, injured or damaged in the sum of one hundred thousand dollars, or in any sum whatever.

Denies that said defendant, ^{or} at any time, for any consideration whatever, or at all, contracted, agreed or promised to safely or otherwise carry or transport said plaintiff from the said city of Ogden to the city of Sacramento, or to any place whatever.

Second.

Defendant further answering said complaint, and by way of affirmative matters, alleges that heretofore, to wit, on or about
29 the 25th day of January, 1889, the plaintiff herein entered upon the railway train and into the railway car of defendant at the city of Ogden in the Territory of Utah.

That said plaintiff then and there had in his possession a certain pretended railway ticket, which said pretended ticket said plaintiff then and there presented to the conductor and servant of defendant in charge of said train, and then and there claimed and asserted the right to travel thereon, and by virtue thereof, from the said city of Ogden to the said city of San Diego, over and by way of the Central Pacific Railroad, which said claim and assertion of right as to travel were, at all times, denied and disputed by defendant.

Defendant further alleges the said pretended ticket was, as defendant is informed and believes, originally issued from and by the Union Pacific Railway Company, but in this connection said defendant, upon its information and belief, alleges that said pretended ticket was not at any time sold or delivered to said plaintiff by said Union Pacific Railway Company, but that the same was delivered to said plaintiff by some person, to defendant unknown, and by some person having no authority so to do, and by some person who was neither an agent of the said Union Pacific Railway Company, nor authorized by said railway company to sell or deliver railway tickets, nor was the same sold or delivered to said plaintiff by any agent or employee of this defendant, nor was the same ever sold or delivered to said plaintiff by this defendant; and in this connection defendant further alleges, upon information and belief, that said pretended ticket was delivered to said plaintiff by some one
 30 known as a "scalper," having no connection with nor employed by any railway company to sell railway tickets, or otherwise.

Defendant further alleges that said pretended ticket had, in addition to other rules, regulations and requirements printed and endorsed thereon, the following, to wit :

"3rd. If not so used, and if more than one date is cancelled, " or if presented by any person than the original holder, this " ticket is void, and conductor will take up and collect full " fare."

Also the following : " 4th. Any alterations or erasures will " render this ticket void." Also the following : " 6th. The " holder will write his or her signature when required by con- " ductors or agents."

Defendant further alleges that said pretended ticket was also provided with a space in which to be written the signature of the purchaser of such ticket, at the time of the purchase thereof, the name of such purchaser to be written and signed immediately following the word " signature" printed upon said ticket.

Defendant further alleges that said plaintiff had not at any time signed said ticket, nor affixed thereto his signature, as the purchaser thereof.

Defendant further alleges that, although often requested so to do by the conductor and agent in this regard, of this defendant, the said plaintiff did refuse, and had at all times refused, to sign or affix his signature to said pretended ticket as the purchaser thereof, and did refuse, and had at all times refused, to write his signature or name, in any place, or in any manner, although often requested so to do by said conductor in charge of said train. Defendant further alleges that said Union Pacific Railway Company had not, nor had any agent, servant or employee of said Union Pacific Railway Company, nor had any person whomsoever, any right, permission or authority to sell or deliver said ticket without first requiring the signature of the purchasser to be affixed thereto. That said Union Pacific Railway Company had not been authorized, empowered or employed to issue, sell or deliver said ticket, without such signature, to any person whomsoever, but said railway company in this connection had been expressly notified by this defendant not to sell tickets, pretending, claiming and asserting the same to be good for passage over, and as entitling the holder thereof to travel upon, the said Central Pacific Railroad, unless the same were signed, in the manner hereinbefore mentioned, by the purchaser thereof at the time of such purchase.

Defendant further alleges that in all its railway operations, and in all its railway business, in so far as it affects public travel, it does and has recognized, permitted and used two kinds of classes of "First-class, unlimited tickets" as evidence of the right, in the holder thereof, to travel over its line of railway, to wit: Tickets from points off of and beyond its lines of travel to points upon or beyond its said lines of travel; and secondly, "First-class unlimited local tickets," which latter are tickets only good from points to points wholly situated upon its said lines of travel, and which said latter tickets are only sold by the agents and servants of this defendant in its immediate employ.

Defendant further alleges that the railroad fare from the eastern terminus of said Union Pacific Railroad, to wit, the said city of Council Bluffs, or the railroad fare from any point intermediate the eastern and western terminus of said Union Pacific Railway, to wit, between the cities of Council Bluffs and Ogden, to the said city of San Diego, by the way of the said Central Pacific Railroad, or to any point beyond or upon the line of the said Central Pacific Railroad, is much less, when the said distance is traveled as one continuous trip, and made upon and by virtue of one and a single ticket covering the entire distance so traveled, than when said distance is traveled and said trip is made upon, by virtue of, and by the purchase of, local tickets, or tickets only covering separate, distinct and independent lines of

travel, as are the said Union and Central Pacific Railroads, between said points on the said Union Pacific Railway to the said city of San Diego, or to any point beyond or upon the line of the said Central Pacific Railroad.

Defendant further alleges that the proportion or part of one single fare, or the proportion or part of the purchase price of a single through ticket, from any point on the said Union Pacific Railway to the said city of San Diego, or to any point beyond or upon the line of the said Central Pacific Railroad, when the same is evidenced by a single railway ticket, as aforesaid, to which this defendant is or would be entitled in a division of such fare with said Union Pacific Railway, is
 33 much less than this defendant would be entitled to, and would demand, collect and receive, at local rates as aforesaid, or where a ticket is purchased, or a single fare paid from the city of Ogden, the eastern terminus of said Central Pacific Railroad, to the city of San Diego, or to any point beyond or upon the line of said Central Pacific Railroad.

Defendant further alleges that, in consideration of the fact that this defendant recognized and allowed and permitted the use of such ticket, as evidence of the right upon the part of the holders thereof to a passage over and upon its railroad lines as are herein first described, and known as through tickets, from points on the said Union Pacific Railway, and in consideration of the fact that such tickets cost less than the aggregate amount of the cost of tickets at local rates as herein last described, this defendant, for itself, and also in conjunction with the said Union Pacific Railway and certain other railway companies comprising the Transcontinental Railway Association, had prior to the 26th day of January, 1889, adopted and established certain rules, regulations and requirements, the same being printed and endorsed upon all tickets known as through tickets, among which are and were the rules, regulations and requirements hereinbefore mentioned, and that such rules, regulations and requirements were in full force and effect upon the said 26th day of January, 1889, and also upon the 11th day of December, 1888.

Defendant further alleges that, in further consideration of the fact that such through tickets were sold at less than the cost of local tickets, in manner aforesaid stated, the
 34 purchaser thereof, including the said plaintiff, in the acceptance of and the assertion of a right to use the same, accepted the said terms so printed thereon, and in consideration as aforesaid undertook, promised and agreed to comply with and submit to said rules, regulations and requirements whenever so requested, as aforesaid.

Defendant further alleges that, upon the said 26th day of January, 1889, the conductor and agent of this defendant in

this regard, in charge of the train upon which said plaintiff was then claiming and asserting the right to travel as a passenger, requested said plaintiff to sign his name to said ticket, or to write his name or signature as provided upon said ticket, or in case of his refusal so to do to pay his fare as a passenger upon said train, and that in case of his refusal so to do that it would then and there be the duty of said conductor, under his employment, to remove him (said plaintiff) from said train ; but in this connection defendant alleges that said plaintiff at all times refused to comply with the request so made as aforesaid.

Defendant further alleges that, upon such refusal upon the part of said plaintiff, the said conductor attempted to eject and remove said plaintiff from said train, using all proper care and caution, and without unnecessary force, and without personal violence or abuse, and without injury or damage to the person or limb of said plaintiff.

Defendant further alleges that said plaintiff then and there successfully resisted all attempts to remove him (said plaintiff) from said train, and said plaintiff was not, at any
35 time, ejected or removed from said train by the said conductor, nor by any servant or employee of this defendant.

Defendant further alleges that said rules, regulations and requirements were adopted and are enforced by this defendant, in the operation of its extensive railroad business, in good faith, and with the view and purpose of preventing the sale of railroad tickets, calling for transportation over its said lines of railroad, by persons wholly unauthorized, and by persons having no authority whatever so to do, derived from this defendant, nor from any other railroad company, and to prevent the transfer of railroad tickets from one person to another and by persons other than the original purchaser thereof.

Defendant further alleges that it has long since learned that this defendant has been subjected to heavy loss and great inconvenience by such unauthorized sales and transfers, and that the adoption of such requirements was necessary to the proper and legitimate conduct of said business, and that the same are in all respects public, uniform and reasonable, and will, in the observance and enforcement thereof, enable defendant to identify the original purchasers of such tickets, and thus prevent imposition and loss to this defendant in its said business, and that the same were adopted and are being enforced by this defendant for such purposes, and not otherwise.

Defendant further alleges, upon its information and belief, that the said plaintiff was not original or first purchaser of said ticket, but that he received or purchased the same from some
36 one wholly unauthorized to sell, transfer or deliver the same, in manner and form as hereinbefore stated.

Defendant further alleges, upon information and belief, that the first or original purchaser of said ticket signed his name thereto, and affixed his signature to said ticket, as required by the said "6th" requirement, at the time of the original purchase thereof, but that said name and signature had been erased and removed therefrom, by some one unknown to defendant, prior to its having been presented by plaintiff to the said conductor of this defendant, as aforesaid, on or about the 25th day of January, 1889.

Defendant further alleges that said ticket is what is known as No. 85, Form 188.

Third.

Defendant further answering said complaint, and by way of additional affirmative matter, alleges that heretofore, to wit, on or about the 26th day of January, 1889, the plaintiff herein did, while upon the train of this defendant, in the manner and under the circumstances stated and set forth in the preceding count or subdivision of this answer, and to which reference is hereby made for all purposes pertinent to this defense, at or near the station upon the Central Pacific Railroad known as and called Rye Patch, in the county of Humboldt, State of Nevada, without provocation, cause or excuse, willfully, forcibly and feloniously commit, with intent then and there to inflict upon the person of the said Derbyshire a bodily injury, the said Derbyshire then and there being the conductor of this defendant, in charge of and having under his immediate supervision the said railway train of defendant, by then and there, in manner and form as aforesaid, drawing a deadly weapon, to wit, a pistol loaded with gunpowder and balls or cartridges, and then and there attempting and threatening to shoot the said Derbyshire, to the great and immediate danger of the said Derbyshire, and to the great consternation of various and divers passengers on board said train.

Defendant further alleges that there was neither a justice of the peace, a constable, nor any character of peace officer at the said Rye Patch station, and that the station or town of Lovelocks was the first station west of said Rye Patch station, said Lovelocks station being in Lake township in said Humboldt county, State of Nevada, and not to exceed seventeen miles east of the west boundary line of said Humboldt county.

Defendant further alleges that, upon the arrival of said train at the said station of Lovelocks, the said plaintiff was arrested and removed from said train by the legally elected, qualified and acting constable of said Lake township, upon the charge of having committed said assault, as herein stated and set forth, and on account and by reason of the acts and things herein complained of, and not otherwise.

Defendant further alleges that, upon the commission of said assault in manner as herein stated, this defendant was at once informed of the same, whereupon, and by reason thereof, this defendant, by its division superintendent, requested the presence of said constable at said Lovelocks station, upon the arrival of said train.

Defendant further alleges that, by reason of the fact that the justice of the peace, one W. C. Pitt, was then, at the time
38 of the arrival of said train, absent from his office at said Lovelocks station, and a warrant could not at once be obtained from the said justice of the peace, and in order to prevent the said plaintiff from departing out of and from the jurisdiction of said Justice Court in said Humboldt county, the said plaintiff was arrested and removed from said train by said constable, without a warrant having first been issued therefor.

Defendant further alleges that immediately thereafter an affidavit of complaint was made out, sworn to, and filed with and by said justice of the peace, and a warrant in due form issued thereon, and the same at once placed in the hands of the said constable for service, and the said plaintiff was thereupon arrested, held and detained by virtue thereof, upon said charge, and not otherwise.

Defendant further alleges that this defendant fully believed, and at all times fully believed, that said plaintiff was guilty of the matters, acts and things therein, and in said affidavit or complaint charged against said plaintiff, and at all times acted in good faith, and upon good and reasonable grounds therein, and in all things connected with the arrest of said plaintiff.

Defendant further alleges that in all things relating to and connected with the said arrest of said plaintiff it, as well as its agents, servants and employees, acted without any malice whatever toward said plaintiff, and was simply actuated and prompted by a desire to protect its servants and employees from
39 personal injury, and its passengers upon its passenger trains from serious annoyance and danger.

Defendant further alleges that this defendant, its agents, servants and employees, in the making of said affidavit or complaint upon which said warrant for the arrest of said plaintiff was issued by said justice of the peace, acted in good faith, upon reasonable grounds, and without malice toward said plaintiff, and that both said justice of the peace and said constable, in issuing said warrant and in making said arrest, acted in good faith, without malice, and in the belief that said plaintiff was guilty of the offense against him, and upon reasonable grounds, and without any intention, desire or purpose to injure, harass or damage said plaintiff.

Defendant further alleges that the arrest of said plaintiff by said constable, as herein stated, is the arrest and ejection of said

plaintiff as set forth and complained of in his said complaint, and out of and in connection with which grew and arose the proceedings, matters and things set forth and complained of by said plaintiff in his said complaint, and none other.

Defendant therefore having fully answered said complaint demands a judgment for its costs.

BAKER and WINES,
Attorneys for Defendant.

40 STATE OF NEVADA, }
Washoe County. } ss.

J. L. Wines, being first duly sworn, says: I am one of the attorneys for the defendant above named, and also the agent of and for said defendant, appointed by said defendant, in the State of Nevada, upon whom service of process can be made. That said defendant is a non-resident of, and is now absent from, the said State of Nevada, the State in which affiant resides, and that there is no officer of said defendant in or residing in the said State of Nevada authorized to make this verification.

That I have read the above and foregoing amended answer and know the contents thereof, and that the same is true of my own knowledge, except as to the matters and things therein stated upon any information or belief, and that as to those matters and things I believe it to be true.

J. L. WINES.

Sworn to before me and subscribed in my presence this the 2nd day of May, 1890.

[SEAL]

T. V. JULIEN,
*Clerk of the Dist. Court of Nevada,
in and for Washoe County.*

Filed May 15, 1890.

T. J. EDWARDS, *Clerk.*

41 In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

SOUTHERN PACIFIC COMPANY, Plaintiff in Error, }
vs. }
ASA M. HAMILTON, Defendant in Error.

Bill of Exceptions.

Be it remembered, that this cause came on regularly for trial in said court upon the 9th day of November, 1891, being a day of the regular November term of said court, Hon. Thomas P. Halsey, District Judge, presiding, and a jury of twelve men having been duly and regularly empaneled and sworn to try said cause, wherein Asa M. Hamilton (defendant in error) was plaintiff, and Southern Pacific Company (plaintiff in error) was

defendant, and the following testimony was introduced and the following and no other proceedings were had therein:

ASA M. HAMILTON, being called as a witness in his own behalf, and having been first duly sworn, testified as follows:

My name is Asa M. Hamilton; I am the plaintiff in this action; I lived in Portland, Oregon; I was born there,
42 and have lived the most of my life there, except the last ten or twelve years.

On the 26th day of January, 1889, I was traveling between Omaha—rather, between Ogden and San Francisco—on the Southern Pacific train. I was a passenger on that train and had a ticket. Look at that (here counsel shows to the witness a railroad ticket). Was that the ticket? A. Yes, sir. It is in the same condition now that it was then with the exception of these pasters on the back and some writing on the back of it. Those are simply the file marks; the “W. C. P.” are the initials of the justice of the peace at Lovelocks. It was introduced in evidence on my examination before the justice of the peace. I bought it from a ticket broker in Denver. I think it was \$60.00, as near as I can remember, I paid for it. I bought it in his office. It was a regular ticket office. When I bought it there were coupons on it. One from Denver to Ogden, that was taken up by the Union Pacific Company. I arrived at Ogden about 11 o'clock in the evening, as near as I can remember. It was fully that late. I left Denver early in the evening and arrived at Ogden the following evening a little later.

Q. What is that (here counsel calls attention of witness to a hole in the ticket)?

A. That is the baggage punch. It was put in the San Francisco coupon because that is as far as I checked my baggage to from Denver to San Francisco.

The punches in the ticket signify the destination of the ticket; the name of the town the ticket is sold to is
43 between those punch marks. There never was any signature on that portion of the ticket opposite the word “signature” there.

I got to Ogden about 11 o'clock in the evening. At that time the porter had gathered up all the tickets of the passengers in the sleeper, because most of them would be in bed at Ogden, and, the conductors changing, it would keep from annoying the passengers; so the porter had taken up all of our tickets, and I suppose he had them at that time, until we arrived at the station at Ogden.

Q. When did you first learn he did not have it?

A. As I was coming back from the depot to the train at Ogden—I stepped out at the depot to get some lunch, and came back to

the train—the agent at Ogden was sitting in the sleeper, a section of the sleeper, counting up, looking over a stack of railroad tickets, mine among the rest. He asked me if that was my ticket, and I told him yes. That is the first I saw of the ticket after I gave it to the porter. This was the Southern Pacific agent at Ogden, I suppose, because he had charge of all the tickets of the passengers. I got on to this sleeper at Denver. It was a through sleeper, and I gave the ticket to this porter before I got to Ogden. The train agent at Ogden asked me if this was my ticket. He says, “Are you in section nine?” I said, “Yes, sir.” He says, “Is this your ticket?” I said, “Yes.” Then he says: “You will have to sign this ticket.” Says I, “What for?” He says, “It don’t make any difference what for; you have got to
 44 “sign it.” I says: “I never heard of an unlimited first-
 “class ticket having to have a signature on. I don’t
 “think I have to sign it.” He says, “You will, or have
 “trouble with the conductors.” I says: “That remains to be
 “seen in the future. I don’t think I will. I never had to yet.”
 That is about all that was said. I walked away and went to bed. I had a Pullman ticket for part of section nine; I believe I had the whole section. I am not sure. I had paid for that ticket. The next man who spoke to me about this ticket was the first conductor this side of Ogden. I remember, Mr. Luty, here on the other trial; I believe it was him.

The next morning after leaving Ogden, after I got up, he came to me—I am not sure whether he had the ticket, or the porter gave it back to me. I do not remember about that—but he came to me, as a conductor, either with my ticket or to get it, whichever it was. If I had it I gave it to him, and if he had it he gave it back to me, and said: “You must sign this ticket or pay
 “your fare, but I cannot punch it.” I said: “The agent at Og-
 “den told me the same, that I would have trouble if I did not
 “sign.” I said: “I do not think you have any right to make
 “me sign, and I do not want to sign the ticket.” He says:
 “Those are our orders, to get all these tickets signed. You bet-
 “ter sign it.” I said, “No, I don’t want to sign it.” He asked
 me why, and I told him because I thought I would be signing
 away my rights; it was an unlimited ticket, and there was a con-
 tract there I did not want to sign. He asked me why, and
 wanted me to sign. I said, “I never heard a passenger being
 “asked to sign an unlimited ticket before.” He told me it was
 so he could take up the coupon reading from Ogden to
 45 San Francisco, and also the one reading from San Fran-
 cisco to Los Angeles, and issue me a pass check, and
 paste it on the bottom of the ticket where the coupon is. I said
 I would not sign it anyway now, because I did not want to give
 my ticket up for a train check to Los Angeles. I did not know
 when I was going to Los Angeles or to San Francisco. I might

have kept the ticket a year, or might have sold it, or might have kept it ten years, and it was good.

Mr. Wines—You are stating conclusions of law.

A. I am stating why I would not sign the ticket. That was to Mr. Luty, the first conductor. He did not attempt to put me off, but he threatened to if I did not sign. He probably thought he could coerce me into signing, but he did not put me off. I forget the name of the station where he left me. He was on the first division, wherever it was; I believe it was Wells. Mr. Case then took charge of the train. He was there on the last trial. His division ran from Wells to Winnemucca. He came and asked me to sign or else pay my fare, or he would put me off, time and time again. Finally he came with a telegram and showed it to me, and it read: "Use passenger as if he had no ticket." Signed T. H. Goodman. He said: "You see these are my orders. I will have to put you off." I said: "If you can put me off I suppose I will be off the car when you do." I said, "I don't think you can or will." He asked me several times after that if I was going to sign, and finally we arrived at Winnemucca, where he left the car.

The punch mark on this ticket I thought was Mr. Luty's, but on the other trial of this case it was proven to be Cases.

I could not say where we were when he showed me
46 the dispatch, probably an hour or more before he left the train, but he did not put me off. Mr. Derbyshire came aboard and took charge of the train at Winnemucca. He came at me about the manner as the rest—"sign this ticket," or he would put me off, only he was a little more constant. He annoyed me a little more, annoyed me about this probably every half hour, threatened to put me off if I did not pay my fare or sign the ticket. Finally he came to me and he said: "Let me sign this ticket for you." No, that was not the first either. He said: "Are you not going to sign this ticket? Come on now, and sign it. Why won't you?" I said: "I don't want to." He said: "You better sign it." I said: "Don't bother me any more. I can't write." He said: "Let me sign it? He had the ticket in his hand, and I said: "No, you have no right to sign my name; if you do I will have you arrested for forgery." He said: "Suppose I keep this ticket," and made a motion to put it in his pocket. I said: "If you do I will have you arrested for highway robbery. That is my piece of property." And he handed it back to me. Then I left my section to go into the smoking-room, and Derbyshire came to me sometime after this conversation had taken place. I had my slippers on, and he said: "Now you go and put on your shoes, because I am going to put you off at the next station." I thought probably he would, and I changed my slippers and put on my shoes. The train ran into the next

station, and Derbyshire and a brakeman came, and he said: "Are you going to sign this ticket?" I said, "No." He said to the brakeman: "Take hold of him," and one grabbed me, one on one side and one on the other, each with
47 one hand on my neck and the other on my wrist. With that I grabbed the rail on the side of the car under the window, the arm rest, and put my toes under the heater. They pulled on me for at least four or five minutes, but they could not release my hold. He said to the brakeman: "Go and get the rest of the train hands and we will get him off." As he said that—I was sitting at that time—I threw myself back and opened my valise and got out my pistol, climbed up on the back of the seat between the curtain-rail and the top of the car, threw my arm over the curtain-rail, with the pistol pointing to the ceiling,—threw it up to the ceiling and took hold of the curtain-rail with my other hand. In the mean time the rest of the train hands came to the door of the car, one with a jumper on and the other a pair of blue overalls. I thought they were train men. At that time I had my gun pointed at the ceiling. I said: "I don't want any of you men to bother me. I have a
"right here, and I want you to keep away from here or probably
"you will get hurt. I have been worked up and bothered about
"this until I don't know hardly what I am doing. Now keep
"away,"—or words to that effect. That is about what it meant but maybe not the exact words.

There was one lady got up to go out. I said to her husband: "Don't let your wife be worried; there is no one going to be
"hurt." I said to the rest of the passengers: "There is going
"to be no accident. I know how to handle this gun." They all sat down except the lady, and she walked out of the car. Her name was Mrs. Levy. Her husband gave his deposition in
this case. He could not remain as a witness. I told the
48 conductor I was subject to heart disease, and not to annoy me or bother me, and that is true.

The pistol was not cocked at any time. It was not a self-cocker. After they left the car, then everything was quiet until the train ran into Lovelocks. I remained up on the back of the seat until they left the car, and then I got down. The train pulled out of the station, and I took the pistol and put it down on the floor of the car under the seat, and went into the smoking room of the sleeper. I asked the porter, if I went in the smoking room and locked the door, could any one get in there, and he said no. I went in the smoking room and locked the door with a bolt so no one could disturb me. I thought that it was all over—they would not bother me any more—and unlocked the door, and some of the other passengers came in. Some said to me: "Where is your pistol?" I think the gentleman that had his wife with him. I said: "It is under the seat. There

“is no danger.” He said: “You better go and get it. It might go off.” So I said: “I will,” and I went and got the pistol and put it in my waistband here (showing, pointing to the waistband of his trousers), and came back in the smoker. There was nothing happened more than in any other car until we ran into Lovelocks station. Then two men came to the door of the car, and the car inspector was behind them. They turned and looked at him, and he nodded his head that way (showing), looking towards me. I did not hear what he said. They made a spring and grabbed me and snapped on a pair of handcuffs. I protested all the time. I said: “Gentlemen, I am not going to make any resistance.” I said: “There is no
49 “need of these handcuffs.” When I saw the handcuffs

I supposed they were officers. I said I was not going to struggle. They searched me, but they did not find my gun. I asked them what they were looking for, and they said they were looking for my gun. I said: “Here it is,” and pulled up my vest and showed them where my gun was. They said: “To go on—

I know Eugene Couzzens. The man with him had firearms in his hand, which he held down like that (showing), not pointing towards me. I think he had his hands partially out of his pocket, and the gun just pointing in the pocket. I think that is just exactly as it was. That is my recollection of it. They said to go on, and they drove me off ahead of them; and as I was going some one put my overcoat over my shoulders. It was a bitter cold night. They took me over to the store and post-office. I do not know the firm name. Couzzens was there, I know.

The U. S. postoffice was there; they took me over there ironed. The store was full of people, and I felt rather mortified to be ironed in a public place. I said to Couzzens, “Take those irons off; I am not going to try to run away.” He said, “I will have to leave them on a while.” He was a little excited himself.

Q. State what your feelings were at that time, and what you did?

A. Well, it is pretty hard to state the feeling. One could imagine their own feelings in the same position. It would be pretty hard to state my feelings. I was worked up and felt mortified and all that sort of thing. I was some-
50 what excited at the time. I felt my position at the time, men, women and children looking at me; I felt like any stranger in a strange town. I did not know anybody, was heavily ironed, and not told what they would do with me. I did not know anybody, and could not tell what would happen. They might keep me in jail there for months; I did not know. I could not tell what they would do with me; this flashed through

my mind. I did discover one or two friends there ; I was probably half an hour or three-quarters at the store. I asked Mr. Couzzens to take the handcuffs off, and he said : " We will keep " them on a while." Finally they took them off, and we went from there down to the justice of the peace. They sent for the justice of the peace. That is all I can remember. He came and my bond was set at \$1,000. I said : " Well, I have not got " any money to give my own bonds, to give a cash bond." And I said: "I don't know anybody here." The jail doors were open, a little bit of a cold, low room; they were half the size of the justice's office. I said: "I dont want to be put in there. I " will pay anything in reason to have some one parole me." Young Lovelocks spoke up and said: "I will parole you," which he did for three days. Nothing was said about a warrant until we got to the office of the justice of the peace. A warrant was read to me; I believe it was sometime after I got there, whether then or later I do not remember. I stayed there in Lovelocks for five days under the charge of an assault with a deadly weapon, and was then prosecuted by Messrs. Baker & Wines. In the mean time I had wired to Winnemucca, and Mr. MacMillan came down to defend me. I had to pay for the

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telegram.

You (addressing MacMillan) defended me, and Messrs. Baker & Wines prosecuted the case. The district attorney of Humboldt county was not present. The complaint was sworn to by Mr. Donlan, defendant's agent at Lovelocks. Couzzens and this fellow who came into the train with him did not say they were officers ; I first learned they were officers when I got to the store. Of course, when they had the handcuffs, I thought they were; I did not know, and they did not tell me, and they had no badge on, nor any uniform, and were dressed as any other citizen. I first discovered that he was a peace officer at the store. They told me there that he was ; I do not remember whether he was constable or sheriff, or both. They did not tell me what I was arrested for until they read this complaint.

Mr. MacMillan—We offer this ticket in evidence.

The Court—Let it be admitted in evidence subject to the objection and argument which will be made hereafter.

It is a patent pasteboard and used by different railroad companies for coupon tickets, and is as follows :

53 When I was put off the train I was going to Portland to help settle my father's estate. I was one of the executors of his wealth. I was detained five days by reason of the arrest.

I bought another from Lovelocks to San Francisco after the trial was over. I was forced to wire to San Francisco for money to buy this ticket and pay my expenses. I just took barely money enough to pay my expenses on the car, after buying my ticket. I telegraphed to San Francisco for money. I was forced to give bonds at Lovelocks, and two gentlemen went on my bond for one thousand dollars, after I had been on parole three days. The third day I got my bond.

All of these incidents I have described were in the presence of the passengers in the Pullman car, except when I went to the store. I mean the trouble on the car.

It was considerably after dark when I was arrested at the station before. It must have been an hour and a half after dark. I was discharged from the charges preferred against me by the justice at the examination.

I was under parole three days ; what I mean by the parole is, young Lovelocks took me in charge, and vouched for me, that he would bring me there at the trial. He was with me day and night, slept with me in the same bed, was with me all the time, for three days and three nights.

The Justice's Court and jail at Lovelocks is a little one-story low, stone building, about 30 feet long—hardly that, about 25 feet long—and $12\frac{1}{2}$ feet wide. About twice as long as the width; the front portion of the building, which was the Justice's Court, probably a room 12 x 12. In the back portion were
54 two cells with iron doors, with a stone partition between the cells. They were very dirty looking, a dirty mattress on the floor of each of them, with no covers of any kind, and no one in them. It was not occupied.

Cross-examination.

I arrived in Denver about a week before I took this train; went directly through ; got to Lovelocks on the 26th, I believe, of January. I purchased the ticket the day I left, the afternoon of the day that I left, late in the afternoon. I bought it from a ticket broker. I forget his name, I think "Simmons" or "Symons," something like that.

He had a sign "Ticket Broker;" there were several there where railroad tickets could be bought and sold. It was not a regular ticket office; no, sir. I inquired if they had any tickets for San Francisco. He said, "No." He had a ticket for San Diego and told me the price, and I bought it. That is the only one I saw, the only one he showed.

I was then on my journey to Portland, Oregon, but I had business in San Francisco, and that is the reason I went that way. I did not inquire for a ticket to San Diego. I never heard of a ticket to Portland by way of San Francisco. I thought it was impossible for a ticket to be sold that way. I never heard of one sold to Portland via San Francisco. If a person has business in San Francisco, they seldom go direct from Denver to Portland unless they are traveling for pleasure. The ticket broker said he had a ticket to San Diego by way of
55 San Francisco; showed it to me and examined it; read it over; not the whole of it. I just saw what kind of a ticket it was, and where the destination was, and that was all right. I did not read the contract or anything of that kind, because I was familiar with that. They are all about the same, on the limited tickets, and inquired the price of the ticket, and as near as I can remember it was \$60.00. It is so long ago I do not exactly remember, but I knew about the rate. I think it was \$60.00 or in that vicinity. I bought a ticket for \$60.00 to San Diego. I think it was the same price to San Francisco as I paid. But I bought my ticket to San Diego. I think it was exactly the same. I had asked from friends or acquaintances what the fare was to San Francisco. Every one living in town knows the price of transit from one town to another, that has traveled much. And he offered this ticket to San Diego at the same price. I had no idea of going to San Diego, but I travel a great deal, and may, and likely to go to San Diego at any time, or to any other portion of the country. I might have put the ticket in my trunk and kept it there for five years; I had no set intention. I could have rode to San Francisco and sold the ticket from there to San Diego; can't say it was my intention, no, sir. If I could get a price satisfactory to me-I would have sold it, and if I did not I would have kept it, more than likely. I did not have any settled thing to do with the ticket. I might have stated to the conductor on the train when they asked me to sign this ticket, that it would interfere with selling the ticket, when I got to
56 San Francisco, but I do not remember whether I did or not. It would surely have done that, if I had signed it, because there would be my signature on it, and people are a little timid about buying a ticket with another man's signature to the contract. It made no difference to an unlimited first-class ticket, but a man's signature to the contract aids it.

I did not want to make a limited ticket of an unlimited contract, but I do not think it would reduce the class of it to sign it. A conductor told me he would take these coupons off, reading from Omaha to Los Angeles, and give me a train check, a continuous train check. I believe those were his words.

I had a first-class unlimited ticket at the time, and I did not want to exchange it for that. I thought it was an imposition in

him asking me to do it. He said, "This is a train check," and would be a voucher for a continuous passage. That was his own testimony in the case, I believe to Conductor Luty. I am sure of that as of any of the other evidence that was given. There was a great deal of it, and a man may be mistaken. On the train he said he wanted to take up these coupons, and give me a train check. I believe he said at that time something about my having to make a continuous journey on the ticket he gave me in exchange. I would not be sure.

The agent at Ogden had this ticket at 11 o'clock, as I was coming in from getting lunch at the depot. I think the porter took them up. I think he is the one that takes up the tickets. The porter took them up before we reached Ogden.

I came in through the car at Ogden, and this agent was
57 sitting there in a section made up, and he asked me if I was in section No. 9 or 6,—I forget the number of the section, but it don't make any difference, anyway,—if I was in that section, because the section number was on the envelope this ticket was in, so they would know who to give it to. He asked me if I belonged to the certain section, and I told him yes. He said: "You will have to sign this ticket." I said: "What for?" He said: "It don't make any difference what for; you will have to sign it." I says, "I don't know why I should sign it." He says: "You will have to or have trouble with the conductor." I said: "That is for the future to determine." He went off and I walked to my bed. He might have said the rules of the company required it. I did not sign it then more because of the manner he asked it. You will have to do this and have to do that—the principle; I don't like to be talked to in that manner, especially if a person has a little independence about him. I declined to sign it anyway. I did not see the conductor of the train that night.

The next morning, in the morning, after I got up, while I was washing, I first met Conductor Luty. I was not disturbed that night. In the morning the conductor came along and asked me to sign this ticket, and I said to him the agent at Ogden told me I would have trouble if I did not sign it. I said: "I do not think you have a right to ask me to sign an unlimited first-class ticket." He said: "It is rutable to sign; everybody else does it." I said: "I do not think it is." Says I: "Why do you want a first-class unlimited ticket signed?" He told me to tear

off the coupons and give me a check. I said:
58 "I don't want to do that, and won't sign it." He kept on all along the division, that I would have to sign, and I would not sign, and he threatened to put me off, but he did not. It was the same way over the next division; he said I would have to sign, pay my fare or get off, and I declined to do either. He said if I did not he would have to put me off, but he did

not attempt to put me off, and in probably an hour or so, I do not remember the exact time, we got into Wells. I do not know whether he said in so many words, that he could not know the ticket, but he meant that. I do not remember him saying anything about the rules of the company. He might have done that; I am not positive whether he did or not. (honor)

Mr. Luty was very gentlemanly in his deportment towards me as far as a man could be under the circumstances. He spoke in a loud tone of voice, the same as a man in every-day conversation, the same as you and I are talking now.

After leaving Wells I encountered Mr. Case, as conductor, and he said about the same as Mr. Luty, but did not offer to exchange the ticket. He simply asked me to sign the ticket or pay my fare, or they would put me off. He said nothing about exchanging my ticket for a train check, and I again declined to sign the ticket, pay my fare or leave the train. He did honor it by punching it; said nothing about honoring it only in his actions, in telling me he would have to put me off, I would have to get off, or they would put me off; that is the only way. He said that several times in his conversation. He showed me what purported to be a telegram, not on a telegraph blank, signed "T. H. Goodman," that said: "Use passenger as 59 "if he had no ticket." I did not see the whole of the telegram. He pointed out this passage to me and says: "Read that." I read that and saw the signature, and I again declined to sign and refused to pay fare. I could not pay my fare. I had not that much money. I only had \$12.00 or \$13.00. I remember not exactly. When Mr. Couzzens searched me and took my money away he counted it and I said just \$13.00. He said: "That is an unlucky number," and I said: "No, here is another quarter." I remember it was just \$13.00 and a little over.

I did not say to any of those conductors that I did not have funds with which to pay my fare. That was not my reason for declining to pay fare, but because I considered I was not required to do it.

Mr. Case did not put me off the train. He threatened to put me off, but he did not carry his threats into execution.

At Winnemucca it is dark at 5 o'clock. The train reached Lovelocks about 8 or 9 o'clock. I do not know exactly, but several hours after dark. It was dark at Rye Patch.

When I met Mr. Derbyshire his opening conversation was about the same as the others—that I would have to sign the ticket or pay my fare, or get off. If I did not they would put me off. He might have said that he would not honor the ticket unless signed. It is three years ago and a man would not remember every word said. He might have said that. I do not say he did not.

They were continually after me, saying: "Sign, or I will put
 "you off," or "Pay your fare, or I will put you off." "Put off"
 were the words poured into my ear all the time. I
 60 do not believe in a man's signing his rights away, and
 as far as I am conversant with the ticket it would have
 that effect, because then I would sign the contract on this piece
 of paper for another class of ticket. I know that from experi-
 ence and from reading it up; looking it up. This may be a
 legal conclusion, if you put it that way, but I am very conver-
 sant with that piece of pasteboard. I am not going to swear to
 the legal construction, that is for the Court.

By signing the ticket it would destroy my rights in this way,
 if no other: in case I wish to sell the ticket in San Francisco,
 there would be a signature to the contract, and it would depre-
 ciate its value in case I wanted to sell it. I said I had no set
 intention of selling it or keeping it. I might have done either.
 I might have sold it, and in case I did want to it would
 depreciate the value of it. A man has to look out for his own
 interests. The first conductor said he would take a portion of
 the ticket from me, and give me something else. Mr Luty, he
 said: "We want to hurry, so we can send this back to the
 "office, and get our money for part of this ticket." That is the
 reason they gave me, but they had another one, and I knew it.
 The other reason was to spoil the sale of these tickets in San
 Francisco. I thought I would have to go straight through to
 Los Angeles, or if I did not, that the ticket would be worthless
 to me.

Do not know exactly that Mr. Derbyshire approached me as a
 gentleman. He was a little worse than the others, a little more
 demonstrative than the others, still he did not do anything
 ungentlemanly, particularly, until he grabbed me and
 61 tried to throw me off, and that I did not consider very gen-
 tlemanly. He gave me warning that if I did not sign when
 he came to Rye Patch he would have to put me off. He did not
 say the next station; he told me that all along all through the
 division. He told me to put my shoes on because he would
 put me off at the next station if I did not sign the ticket or pay
 my fare, and at the next station he attempted to put me off, and
 he and his brakeman were unsuccessful, and they used quite
 a good deal of force, but they did not use sufficient force to expel
 me from the car, and I do not think they could have; I am a
 pretty strong man. They tugged away at me with one hand on
 my neck, and having hold of my wrists my neck was scratched
 considerably. They took hold of my collar and took hold of
 my wrists; in taking hold of me their hands would probably slip
 off my collar, but these hands on my wrists they held securely;
 I did not struggle. I was trying to loosen their hold on my
 shoulders. They finally gave it up and sent out for more help.

While they were away for assistance I got out my six-shooter. I did not drive them from the car; they stood in the car until they got ready to leave. I did not have the pistol leveled at them. I had it pointed at the ceiling of the car; because any one who knows how to use a pistol will never point it at the object they are going to use it on until that time arrives. I wanted to have my feet as near the level of their heads as I could get them. I could have stood off five or six men in that position. As soon as they dragged me down, I do not know what I would have done. I got my pistol for my own protection, that is all.

62 Q. Did not Derbyshire leave the car?

A. Casually, yes, sir; he did not run out.

Q. Was it casual, or did he leave suddenly?

A. No one ran out of the car, or left that way, in a hurry. They turned and walked out of the car. Probably they did not creep out, and did not run,—walked in a way they would at any other time. I do not think they were frightened very badly. I did not see anything more of the conductor until I was arrested; they probably had no occasion to come back again between the stations. There were no new passengers came into the car I was in. I was in the smoking room of the Pullman car that my seat was in. I had the same right there as in my own seat when I was arrested. These two men came to the door of the car, and the train inspector was behind them. I looked up and saw him, and it struck me, the thought struck me, what is this? And I saw the train inspector nod his head, and they turned and looked at me, and he nodded his head,—motioned to me. The car inspector; I misused the word. I do not remember his name; he pointed me out to the two officers. I did not see Derbyshire there. He was out attending to his business, I suppose, on the platform.

I do not know whether the man who arrested me notified me at all that he was an officer, but it was in the store that I found out his position. Probably an hour and a half, an hour or an hour and a half, after I was arrested, before I was paroled. That took place at the office of the justice of the peace. I do not

63 know whether the warrant was read then or not. I was in such a frame of mind I do not remember whether the warrant was read. I suppose it was, before that, and Mr.

Lovelocks became sponsor for me until I got friends as bail. I was detained there four or five days. The postponement of the trial was at my request, as I had no witnesses there, and no attorney. What could I do; the case was postponed at my request, but I was not remaining there at my own request by any means. The postponement, at that stage of the case, would probably hasten my departure a week or so, I thought. I gave

a bond, I gave it before the parole was taken off. Two gentlemen in Lovelocks went my bond. They were telegraphed by Mr. Derby, I believe, of Nevada, and they were merchants of San Francisco. I know I telegraphed around.

I said to Derbyshire, before he attempted to put me off, that if I went off that train I would have to be taken off; that I would not go voluntarily. He did not attempt to put me off there; it was after that a considerable time. When he came back to put me off at Rye Patch, I think he requested me to get off before he attempted to remove me. I do not remember exactly. He might, and he might not. I do not remember, but probably he did.

Re-direct Examination.

This car inspector I speak about was a witness against me in the examination of the criminal charge, I think. Couzzens searched my pockets and found \$13.25 or a half, a fraction over \$13.00. He took it away; I do not know where he put it.

64 I do not know whether he returned it. I could not say whether he kept it or returned it with my papers and books he took charge of, but he gave it back to me. I paid more than that for a ticket to San Francisco.

Plaintiff then introduced in evidence the complaint and warrant upon which Hamilton was held at Lovelocks, which said complaint and warrant are in the words and figures following, to wit:

65 In the Justice's Court of Lake township, of the county of Humboldt, State of Nevada.

STATE OF NEVADA, Plaintiff, }
 vs. }
 ASA M. HAMILTON, Defendant. }

Personally appeared before me, this 26th day of January, 1889, L. M. Donelin of Lovelocks, in the county of Humboldt, who first being duly sworn complains and says: That one Asa M. Hamilton of ———, on the 26th day of January, 1889, at Lovelocks, in the county of Humboldt, did willfully and unlawfully an assault make with a deadly weapon in and upon the person of George H. Derbyshire, with intent then and there to inflict upon the said George H. Derbyshire a bodily injury, did in a railway coach draw a loaded pistol on the conductor, said Derbyshire, in an angry manner. Said coach was on the C. P. R. R. train No. 4, in Humboldt Co., Nev. This affidavit is made on affiant's information and belief. All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Nevada.

68 HANS C. MARKER, being called as a witness in behalf of the plaintiff, and having been first duly sworn, testifies as follows:

My name is H. C. Marker; reside at Lovelocks, Humboldt county, Nevada. Have lived there since 1875. Am one of the firm of Marker Bros.; was at the railroad depot on the night of January 26th, 1889; think I knew plaintiff. Yes, sir, I was at the depot on the night of January 26th, 1889, the night he was arrested. Saw conductor Derbyshire there that night, and Eugene Couzzens; saw somebody with Couzzens, but do not know who it was. Conductor Derbyshire pointed into the windows of the car from the outside and just said, "There he is," or "There he sits," or something of that kind, to Eugene Couzzens.

69 ADOLPH SON, called for plaintiff, sworn, testified as follows:

Reside in San Francisco. Have resided there 37 years. Am a merchant; wholesale notion business. I know the plaintiff in this action, Mr. Hamilton. I don't exactly remember the date, but I know I was on the train with him on the occasion of his arrest. Met the plaintiff after leaving Cheyenne, and rode with him to Lovelocks. I was an eye-witness to quite a number of the scenes detailed here by Mr. Hamilton himself, concerning the conductor's interview with him in reference to his ticket, and asking for his fare and wanting him to sign the ticket, and so forth. I don't remember having seen the conductor have any conversation with him about his ticket until after leaving Ogden, between Ogden and Wells. The conductor asked Mr. Hamilton to sign his name to the ticket that he had, and he (Hamilton) said he had a first-class ticket and he had rode on it all the way from Denver, and he saw no reason why he should sign it now. After Mr. Hamilton refused to sign I don't know of anything that the conductor did until after leaving Wells. I think there is another conductor comes on then. When the second conductor came on, I remember two or three, just the conversation between them that he would not sign it, and the conductor asked him to sign it, and the plaintiff always assigned the same reason, that there was no necessity for it because it was a first-class ticket. I was on the train at Rye Patch. I saw a good deal of Mr. Hamilton during the day in the smoking-room of the Pullman car, and they seemed to have worked him up, one conductor after the other.

70 They seemed to work on Mr. Hamilton by asking him to sign the ticket, one after the other—asking him to sign it, and threatening to put him off; and when we got to Rye Patch it was about dark then or a little after dark, the conductor came along with the brakeman; I occupied the section right

adjoining his, and I leaned over where I was within about three feet—no, two feet—of Hamilton, and the conductor was there with the brakeman. “Now,” says he, “I want you to sign this ticket, or if you can’t write, why make a mark, or I will write your name for you.” He said, “No, I have been bothered so much about this matter now that I won’t sign the ticket.” Then the conductor looked at the further end of the car, the porter was sitting there, and he beckoned him with his head to come, and he told the brakeman to take hold of him—to take a hold of Hamilton. Hamilton then swung himself around and took a hold of the arm rest that there is near the window. He took a hold of that this way (showing), and the two, the brakeman and the conductor—or before I go any further than that I wish to state that I saw Mr. Hamilton was in such a terribly worked-up condition I spoke to the conductor, telling them that this man had a first-class ticket, and he had a right to ride in the Pullman car here, and they should not annoy the man or try to put him off the car, but he did not make any reply to that at all, the conductor did not—the two took a hold of him. The porter did not come, but the conductor told the brakeman to take a hold of him, and they worked on him there for three or four minutes. They finally could not succeed in getting 71 him to let go this hold, and when they let go then they walked towards the door, and after they commenced starting off Hamilton reached over on the seat; he had a valise there; he opened that valise and took a pistol out; he got up on the seat with his feet, and put his hand with the pistol in his hand pointing it up towards the ceiling. The conductor had marched off, I suppose, and the brakeman about 15 feet, and stopped there and turned around and looked and saw the situation. The conductor and brakeman went out then, and I went out on the other end of the car. It was dark then; I hollered out to the conductor—I could not see—I hollered to him that they should not try to take the man off, that there would be trouble to take a man off by force in that manner, and I saw the conductor swing his lantern for the train to start. He came out of the telegraph office, and I saw him swing the lantern for the train to start. The train started, and Hamilton got into the smoker—in the smoking room in the car there. When we got to Lovelocks I was standing in the door of the smoking car; there was two men came aboard, came into that smoking car, and one of them turned around, and the conductor showed him with his head which one it was—which one Hamilton was—in the corner there in the smoker, and they walked along kind of looking this way (illustrating), and then bounced down on Hamilton. They caught him; they did not say a word; they put the handcuffs on him. He said to them, “You needn’t handcuff me; I will go with you; you needn’t handcuff me;” but they

didn't make any reply to it; they handcuffed him and took him off. After Hamilton let go I saw his wrist or his hand; 72 the skin was peeled off some where he had a hold against the window—his knuckles. Before the conductor took a hold of him, he says, "I am troubled with heart disease, or "some such thing as that, and I am all worked up; you may "cause my death," or something to that effect.

I have no interest in the event of this action.

73 M. L. LEVY, called for the plaintiff and sworn, testified as follows:

I am a jeweler in San Francisco. I met Mr. Hamilton on the train for the first time when this trouble occurred, either at Cheyenne or a little this side of Cheyenne, I believe it was where the Denver train comes in—Julesburg, or same place of that kind. I don't remember the place; it was either at Cheyenne or a little this side of it where the trains connect, and he got into our sleeping car. I think it was a Northwestern through car. I was on the Southern Pacific passenger train from Ogden to Lovelocks station. I heard some conversation between Mr. Hamilton and the conductor there; the first conductor, I believe, was the one with long hair; I think that was the first conductor that I noticed the conversation with—something about signing a ticket, or something like that, and Mr. Hamilton said that he had traveled that far on the ticket without signing it, and he would not sign it, and they had some controversy about it, and Mr. Hamilton did not sign the ticket. That conversation was with the long-haired conductor which I think was the first, but I remember him distinctly. The plaintiff refused to sign. I did not notice anything before that at all. I was in bed very likely, if it was at night, and if I did notice anything I don't recollect it now; but I do recollect a long-haired conductor. That is the first one I do recollect. I saw—if you call this a difficulty—when he asked him to sign a ticket, as I stated, but that is all I did see or hear.

At Winnemucca, I believe it was, if I remember cor- 74 rectly, Mr. Derbyshire, as I have since learned his name, got on, and had some conversation with him about signing the ticket, and told him he should sign it. And I saw at one time Mr. Derbyshire take out a pencil and say, "Shall I sign it for you?"

And I heard Mr. Hamilton say to him, "If you do it will be a forgery;" and then, when Mr. Derbysire made an attempt to put it in his pocket, I believe Mr. Hamilton says, "I could have you arrested for larceny," or something of that kind, but something like that is in my memory. Mr. Derbyshire spoke to Mr. Hamilton and asked him to sign the ticket, and told him if he did not sign it he would have to put him off, and probably had two or

three or four or five conversations at different hours there, probably an hour apart, something like that, and when we got to Rye Patch—I did not know the name of the station until I afterwards learned it was Rye Patch—Mr. Derbyshire came in and told Mr. Hamilton he had to sign the ticket or else he would put him off, and Mr. Hamilton said: “I have traveled so far on that ticket without signing it, and I will try and stay here; I have paid for my ticket, and I have paid for this berth,” or some words to that effect, and I intend to stay here, and if you are going to put me off you will have to drag me. I then recollect that Mr. Derbyshire, the conductor, and the brakeman came up and tried to put him out. When they did come up to him to take him off, Mr. Hamilton had his hands on an arm rest or a little bar on the side of the Pullman, and he sat down like this and had his feet stiff, and he held on there, and the conductor and brakeman were both working away at him, I believe one with each hand or either

75 one with both hands, but they were working at his hands and wrists, and his collar or his neck. I could not see it, but they were constantly changing positions trying to pull him off, and they could not succeed in doing that after working there, which in my opinion was two or three or four minutes, some length of time, when the conductor told the brakeman to go. I did not hear what he said, but I saw by his motions. The brakeman went out, and he returned with—I saw a man up in the door leading from either the gents’ department or the ladies’ department there. There is a drawing-room on one side, and I do recollect now that the man came from the ladies’ side there, and there was a door leading from the drawing-room or from that aisle there into the sleeping car proper, and I do recollect seeing a pretty big—in my estimation, in my opinion now, a pretty big—man there with light blue jumpers on, overalls and jumpers that had been washed and had not the original color, as I thought, and if I remember right he had a mustache with a goatee. I am not positive about that; it was night, and at that time Mr. Hamilton says: “Now you folks—I am a sick man “and you are bothering me enough,” and all that business, and he stooped down and opened a valise, took a pistol out, stood up on the back of the seat with his hand, I believe, in between the rod and the upper berth there, and the pistol in his hand, and held it up, and he says: “Now you folks have worried me “and bothered me, and I am a sick man; I have got the heart “disease, and you are working me to death, and I intend to protect myself now against any further bother from you folks. I “have got a first-class ticket, and I paid for it, and I am

76 “going to stay here.” And at that time my wife making a run to run out—the lady in the car was my wife—and everybody made a break to run, and he turned around and said:

“ You don’t need now to get frightened. I am not going to hurt you. I know how to handle this pistol, and I am going to protect myself.”

When Mr. Hamilton was up on top there, and he had his pistol in his hand, the conductor was probably ten feet away from him towards the drawing-room there when he motioned to the other people, and they went out, and we stopped there a minute or two or maybe three minutes longer, and I saw through the window his lantern wave, and the train pushed ahead. The pistol was pointed up; he held it up in his hand. After that I went to Mr. Hamilton and said: “ Now, here, you have got my wife scared, and don’t be reckless;” and he told me, “ There is no danger about that;” and I said: “ Do me a favor; don’t make any more trouble, because my wife ain’t very well; she had the diphtheria, or sore throat; I don’t know what it was, and I don’t want her to get scared;” and he said, “ That is all right,” and we all went in the smoking car and sat down; and I was sitting next to Mr. Hamilton, I believe Mr. Son was standing in the doorway of the smoker, when we got up to Lovelocks. When the train came to a standstill two men came in, and I imagined that they were officers; I did not want any more shooting business, and I got out of the road. I got up out of my seat, and as I got out of my seat I saw one man, I believe he had on light gray clothes, something about this color (referring to reporter’s clothes), and I saw him have a
77 pistol with a long barrel right down here, with his finger on the hammer, come in, and his partner had a pair of handcuffs. Well, there was not a word said, but the only thing I saw was the handcuffs over Mr. Hamilton’s wrists, and the clock, and somebody made—well, as if by instinct then everybody had to get off the train with the officers and Mr. Hamilton, and somebody said: “ Give the man an overcoat;” it was a bitter cold night, and somebody, I don’t know if it was his own overcoat or not, but somebody threw an overcoat over his shoulder, and he got off the train there.

I never knew Mr. Hamilton before that occasion. Have seen him two or three or four times. I have no interest in the event of this action.

78 EUGENE COUZZENS, called for plaintiff and sworn, testified as follows:

I reside at Lovelocks. Have lived there about eight years. I know this plaintiff and the defendant in this action, the Southern Pacific Company. Also know the agent of the Southern Pacific Company at Lovelocks. His name is Mr. Donlon. He has been there about five or six years, or four or five years. He was there on the night of the 26th of January, 1889.

Q. Did he ask you on that night to arrest this defendant ?

A. He told me there was a man on the train that they wanted me to take off.

Q. They wanted you to take off ?

A. Yes, sir.

Q. Who did he mean by that "they." Who did you understand him to mean by it ?

A. Well, I understood him to mean the railroad company.

Q. Well, did you take him off ?

A. Yes, sir.

Q. At the request of Mr. Donlon you went on board. Did you have anybody with you ?

A. Yes, sir.

Q. Who was it, Tefner ?

A. Yes, sir.

Q. What business is he in there ?

A. I asked him to come and help me.

Q. I say, what business is he in there—Mr. Tefner ? He isn't a doctor, but they call him that.

79 A. He is a corn doctor, but he is in the saloon business.

Q. You asked him to help you ?

A. Yes, sir.

Q. Did he go with you ?

A. Yes, sir.

Q. Just tell us what you did do; that is the best way to get at it.

A. Well, I went into the car. I asked Mr. Derbyshire, the conductor, to point the man out to me, and he was a little timid, and he wouldn't do it; he said he was afraid to go in the car; he said the man was a little wild, and I believe the car inspector pointed the man out to me. I went in the car, and Mr. Hamilton was writing on an envelope or a postal card. I don't know which, sitting like this (showing) writing.

Q. Where was he ?

A. He was in the smoker in the sleeper.

Q. In the smoker in the end of the sleeper ?

A. Yes, sir; and I walked right in and I put the handcuff over his right hand, I believe, and then I grabbed him by his left. I told him that I wanted him, and he threw up his hands and he says: "Mr. Sheriff, I make no resistance whatever."

Q. Was Doc there in the mean time ?

A. Doc Tefner ?

Q. Yes, sir.

A. Yes, sir.

Q. What was he doing ?

80 A. He was standing on the platform right in the door of the smoker.

Q. Did he have any arms with him ?

A. I think he did, but I am not positive; I did not see them.

Q. You were watching Mr. Hamilton at that time?

A. Yes, sir, I was watching him.

Q. Well, what did you do with Mr. Hamilton then?

A. I took him over to the store.

Q. You were a storekeeper at that time?

A. Yes, sir.

Q. United States postmaster, too?

A. Deputy.

Q. And constable?

A. Yes, sir, and deputy sheriff too.

Q. A notary public also?

A. No, sir.

Q. It was about mail time, was it not?

A. Well, I believe the train was a little late that evening—perhaps ten or fifteen minutes.

Q. Were there many people gathered around there considering the size of the place?

A. Well, at the postoffice, there was quite a number in there; the store or the building was full.

Q. Well, where did you take Mr. Hamilton when you took him from the train?

A. I took him right over to the postoffice.

Q. Right in your store?

81 A. Yes, sir.

Q. How long did you keep him there?

A. Well, I don't think we kept him there more than half an hour or fifteen or maybe twenty minutes.

Q. Did you have any warrant with you at the time?

A. At the time, no, sir.

Q. How long did you leave the handcuffs on him?

A. Well, I don't think they were on him over twenty minutes.

Q. They were on him about twenty?

A. Yes, sir.

Q. Did you search Mr. Hamilton?

A. Yes, sir.

Q. What did you find on him?

A. I found a pistol.

Q. Anything else?

A. A case to the pistol, a scabbard, or whatever you call it.

Q. Anything else?

A. A small pocket-knife.

Q. Anything else?

A. Some money.

Q. How much money?

A. He had \$13.25.

Q. How do you know it was \$13.25 ?

A. Because I counted it.

Q. You counted it ?

A. Yes, sir.

82 Q. And you took it from him ?

A. Yes, sir. I gave it back to him.

Q. I know that Mr. Couzzens. Then where did you take him after this ?

A. I believe I took him over to the jail.

Q. Over to the jail; did you put him in the jail ?

A. No, sir; well, I put him in the front part; it is a little courtroom.

Q. Will you describe to the jury the way the courtroom and jail is situated there ?

A. There are two cells on the back part—on the east part.

Q. Of the courtroom ?

A. Not the east, I mean the north—the northeast.

Q. Well, it is the back part ?

A. It is the back part—two small cells in the back part, and in the front there is a little room there, a small room that we use for a courthouse—the Justice's Court.

Q. And the rooms leading immediately off that are two cells ?

A. Are two cells.

Q. Did you open the door to put him in—anything of that kind ?

A. Yes, sir; I opened the door to put him in.

Q. How did you happen to let him off ?

A. Well, he begged with me not to do it. He says, "I will give you that \$13.25"—I think he said \$13.25—he would give it all to me if I would handcuff him and have a man parole him around the street all night rather than be locked up.

83 Q. He was willing to do anything rather than to go into that place ?

A. Yes, sir.

Q. A kind of a place you keep for Piutes and tramps, isn't it ?

A. Sometimes we put other people in there when we have to.

Q. Not very often, though ?

A. Not very often.

Q. Do you know this piece of paper (handing witness) ?

A. Yes, sir.

Q. What is it ?

Mr. Wines—I would like to see it.

Mr. MacMillan—I will show it to you.

Q. What is it, a copy of a telegram ?

A. It is a copy of a telegram.

Q. Do you know who it is from and to whom ?

A. Well, it reads to the agent, I think it does.

Mr. MacMillan—Your Honor, I offer this in evidence.

Mr. Wines—We have no objection.

The Court—Read it.

Mr. MacMillan—(Reading). Some of the words are abbreviated, though this is the way it reads: *U*a-d-a. 26, agent “ Lovelock. Conductor Derbyshire on No. 4 wires me that a “ man on his train has drawn a six-shooter on him. Have an “ officer on hand when No. 4 arrives. J. H. WHITEHEAD.”

84 *Mr. MacMillan*—Mr. Whitehead, I suppose you will acknowledge, was at that time the Superintendent of that division of the Southern Pacific Company?

Mr. Wines—Is that signed J. H. W.?

Mr. MacMillan—You will admit it is Mr. Whitehead.

Mr. Baker—Mr. Whitehead is here.

The Court—Well, I suppose he was Division Superintendent at that time?

Mr. Baker—Yes, sir, he was.

Mr. MacMillan—Q. How long was Mr. Hamilton in your custody before you served any warrant on him?

A. I don't think it was over half an hour.

Q. He was about half an hour?

A. Yes, sir.

Q. About what time of night was that, do you know?

A. I arrested him, I think, about half past seven.

Q. In the evening?

A. In the evening.

Q. On the 26th of—

A. Of January, 1889.

Q. It was after dark?

A. Yes, sir, it was after dark, and I don't think that he was in over—I don't think it was a half an hour before I got the warrant out for him; it may have been little over and it may be less.

Q. Who gave you the warrant?

A. Judge Pitt.

Q. Who swore to the complaint?

A. I think Mr. Donlon did.

85 Q. Was there any indorsement on the back of the warrant telling you to serve it that night?

A. Forthwith, I believe it said.

Q. Yes, but was there an indorsement on the back telling you you could serve it after dark?

A. I don't think there was.

Q. Just regular form?

A. Just regular form, yes, sir.

Mr. MacMillan—That is all; take the witness.

Cross-examination.

Mr. Wines—Q. Mr. Couzzens, from whom did you first receive information concerning the arrest of Mr. Hamilton?

A. Mr. Donlon, the agent.

Q. What information did he give you?

A. He told me there was a man on No. 4 that pulled a six-shooter on the conductor at Rye Patch, and they wanted me to take him off the train.

Q. To take him off—what for?

A. Well, I suppose for—

Mr. Lindsay—No, what did he say now—not what you suppose. Say what he said.

The Court—Q. What did he say to you? Repeat his language.

A. He says: "There is a man on No. 4 that has pulled a pistol or six-shooter—I am not sure which—on the conductor, and he wanted me to take him off the train."

86 *Mr. Wines*—Q. Did you see the telegram that the agent had received—Donlon?

A. Yes, sir.

Q. The one you just read a moment ago?

A. No, I don't believe it was that one.

Q. How?

A. No, I don't think it was the same one; I am not sure; it may have been the same one.

Q. Well, do you know why Mr. Donlon came to you to take him off?

A. Well, I suppose he came to me because I was an officer.

Q. Did he know that you were an officer there?

A. I think he did.

Q. How long have you been an officer at Lovelocks prior to this time?

A. Well, I got my certificate the first Monday in January.

Q. Had you been acting as an officer there during the year up to that time?

A. Up to that time?

Q. Yes, sir.

A. No, sir; I was elected in November, 1888.

Q. Well, I say during that year?

A. Yes, sir; during that year up to that time.

Q. Did you know anything about the fact that Mr. Hamilton—I mean at this particular time—had had trouble in regard to a ticket?

87 A. No, sir; I did not know anything about the ticket.

Q. You did not know anything about any ticket trouble between himself and the conductor?

A. No, sir.

Q. Then state now to the jury why you took Mr. Hamilton off that train ?

A. Well, I took him off because he had drawn a weapon or pistol or a six-shooter on the conductor, as I was told.

Mr. McMillan—Q. You did not see it ?

A. No, sir; I did not see it.

Mr. Wines—Q. Where was the train when you were first informed of this fact ?

A. The train was—I could not tell you exactly how far it was from Lovelocks, but it was in sight of the station.

Q. It was in sight ?

A. Yes, sir.

Q. Did you know at that time where the justice of the peace was ?

A. No, sir; I did not.

Q. How soon did you find the justice after taking him off.

A. Well, I don't think it was over twenty minutes.

Q. Where did you see him ?

A. He came into the postoffice to get his mail.

Q. Where was he living at that time ?

A. I expect it was about very near half a mile from town.

Q. Half a mile from town ?

88 A. Or from the office, I should say—from town.

Q. How long does that train usually stop at Lovelocks ?

A. About three or four minutes at that time.

Q. Three or four minutes ?

A. Yes, sir.

Q. Would you have had time to file a complaint and have a warrant issued before the train would have left ?

A. No, sir.

Mr. Wines—Q. How long had you known Mr. Donlon ?

A. Well, I have known him for quite a while, but I could not tell you exactly how long.

Q. About how long ?

A. Prior to that time ?

A. Well, I think it is about two years.

Q. Did you have any conversation with Mr. Derbyshire concerning Mr. Hamilton when the train came in ?

A. Yes, sir.

Q. What conversation did you have with him ?

A. Well, he came in and asked for Constable Couzzins.

Q. Who was that ?

A. I suppose that was me; I told him I was the man he was looking for.

Q. Was the plaintiff present ?

A. No, sir, this was in the office of the telegraph office, and I told him I was going in there to take that man off. Mr. Derbyshire came in and asked for Constable Couzzins, and I says, "I am

the man." I said: "Here I am. I guess you want me to take that man off." And he says, "Yes." Says I, "What kind of a man is he?" Well, he said, "He is wild."

He said, "He has got a six-shooter," well, I think he said about that long (about one foot), and he says, "His eyes are sticking out like that," and I was a little frightened myself, and I went off then and heeled myself, and I went in and arrested him.

The Court—Q. What do you mean by heeling yourself?

A. I went and got a pistol.

Q. Armed yourself?

A. Yes, sir.

Mr. Wines—Q. Now state whether in that case Mr. Derbyshire stated to you that he had pulled a gun or a pistol on him?

The Court—State all the conversation.

Mr. Wines—Q. Just state all the conversation.

A. That was all the conversation I had with him.

Q. Didn't he tell you to look out for him?

A. Yes, sir.

Q. Then, before you went into the car, the conductor told you, in connection with his conversation in regard to the pistol, that you had better look out for him, or something to that effect?

A. Yes, sir, I asked Mr. Derbyshire to go and show me the man, and he would not do it.

Q. Did he say why?

A. Because he was afraid of him.

Q. Why did you get an assistant, Mr. Couzzins, to go with you?

A. Well, I wanted some protection myself.

90 Q. Was it by reason of the fact that this information had been imparted to you?

A. Yes, sir.

Q. If you had understood that he was a poor, weakly, sickly man, would you then have considered it necessary to take an assistant with you?

A. No, sir.

Q. Why did you put handcuffs on him?

A. Because I was afraid he might put his pistol on me and make me run.

Q. Now, as a matter of fact, Mr. Couzzins, didn't you do what you did do, taking an assistant, putting the irons on him, because you believed that he was a desperate man to some extent?

A. Yes, sir.

Q. I don't mean a thoroughbred desperado, but you considered that he was a desperate man?

A. Yes, sir.

Q. He was a stranger to you, wasn't he?

A. Yes, sir.

Q. You had no feeling against Mr. Hamilton ?

A. Not at the time, no, sir.

Q. Did you do what you did as an officer ?

A. Yes, sir.

Q. Did the fact of your taking him off the train have anything to do with any ticket at all ?

A. No, sir.

Q. Were you present when the complaint was filed
91 against him in the course of a half an hour after ?

A. Yes, sir; I believe I was.

Q. Who drew up the complaint ?

A. I think the justice drew it up.

Q. Did you hear a conversation at that time between the justice and anybody else, in the presence of Hamilton ? Did you hear a conversation between Mr. Donlon and the justice when he drew up the affidavit ?

A. Mr. Donlon and the Justice were talking, but I don't remember for certain whether Mr. Hamilton was there or not.

Q. But you know the justice drew up the affidavit ?

A. Yes, sir.

Q. And it was sworn to by Mr. Donlon ?

A. Yes, sir.

Q. And the warrant was issued and given to you ?

A. Yes, sir.

Q. And you made a formal arrest at that time ?

A. Yes, sir.

Q. From that time you held Mr. Hamilton under that warrant, did you ?

A. Yes, sir.

Q. And not for any other purpose or reason ?

A. No, sir.

Mr. MacMillan—Wouldn't it be handier to direct the testimony and not ask questions in that way ?

Mr. Wines—We have a right to cross-examine their witness.

The Court—They are cross-examining, and they are
92 given more or less latitude. Proceed.

Mr. Wines—Q. Do you think you would recognize the warrant ?

A. Yes, sir.

Q. Mr. Couzzins, just look at that paper, will you ? Of course, that is not the original, but it is a correct copy.

A. Yes, sir ; I believe that is a copy of it.

Q. Now you state, Mr. Couzzins, that you think that is a copy of the warrant upon which you made the formal arrest of Mr. Hamilton ?

A. Yes, sir ; I think that is a copy.

Q. And upon which and by virtue of which you detained him there at Lovelocks until the examination came off?

A. Yes, sir.

Q. When you were requested to take Mr. Hamilton off that train, was there anything said to you by anybody that the company requested you to take him off because he had refused to sign a ticket or would not pay his fare?

A. No, sir.

Q. That was not the reason at all?

A. Nothing said about a ticket.

Mr. Wines—That is all.

Mr. MacMillan—Q. Now, Mr. Couzzins, you say that you armed yourself, went and got an armed assistant, and put irons on this man, because you thought he was a dangerous character?

A. Yes, sir.

Q. From what source did you get the information upon which you based that opinion?

93 A. Well, Mr. Donlon told me first that he had pulled a pistol on the conductor, and then Mr. Derbyshire telling me that he had a pistol about that long (showing).

Q. Then, in other words, you got all of this information from the defendant or its agents?

A. Yes, sir.

Mr. MacMillan—That is good.

Mr. Wines—I should think it was good. The law makes it good, too.

Mr. MacMillan—That is all.

94 L. M. DONLON, recalled for the plaintiff, testified as follows :

On January 26th, 1889, I received a telegram from Superintendent Whited that a passenger on No. 4 had drawn a six-shooter on Conductor Derbyshire, and to have an officer on hand on the arrival of the train No. 4. When I received that word the train was about 4 or 5 miles distant. It was in sight; I could see the headlight of the locomotive. Upon receipt of that telegram I went to Constable Cousins and showed him the telegram, and told him what it contained and requested him to be there when the train came in. I believe that is all I did. I requested him to arrest him; I supposed it was necessary to arrest him. I had not time before the train arrived to obtain a warrant. The train usually remained at that station two or three minutes generally. There is no other station between Lovelocks and the west line of Humboldt county—no stopping place for train No. 4.

Cross-examination.

It is about 85 miles from Rye Patch to Wadsworth. A telegraphic dispatch would go from Rye Patch to Wadsworth almost instantly, yes, sir. A dispatch would come from Wadsworth to Lovelocks almost instantly. From Rye Patch to Lovelocks is 22 miles. It takes train No. 4—passenger train No. 4—to run from Rye Patch to Lovelocks I should judge about 35 to 40 minutes.

95 E. S. LUTY, called for plaintiff, testified as follows :

In January, 1889, I was conductor of a passenger train on the Southern Pacific system running out of Ogden. I am not acquainted with the plaintiff, Mr. Hamilton, but have seen him before. He took passage upon my train in that month coming west. I think I have seen the ticket introduced by plaintiff in evidence ; that is the kind of a ticket that was presented to me by Mr. Hamilton. I think it is, to the best of my knowledge and belief, the same ticket Hamilton presented to me. I had a conversation with Mr. Hamilton in regard to it at the time. I asked Mr. Hamilton to sign the ticket, so I could exchange it, or a portion of the ticket rather. The ticket came into my possession in this way : All the tickets in the sleeping cars were in the hands of the Pullman porter. The train left Ogden at about 11:30 P. M.; it was customary, and custom had made it a rule, with us on that division, not to molest the passengers during the night, but to take the tickets from the porter, exchange those that had to be exchanged according to our instructions, and return the tickets to the passengers the next morning after they were up. During the night I exchanged all the tickets that were necessary to be exchanged with the exception of this one, Mr. Hamilton's ticket. I found that the ticket had not been signed; consequently I took it to Mr. Hamilton the next morning and tried to explain to him that it was necessary to exchange a portion of this ticket; before I could do so the ticket must be signed, as it was nothing more or less than the form of a ticket without the signature. He

96 said he had been annoyed by some person in Ogden, and that he had refused to sign the ticket for this man, and he thought that he would still refuse. However, he said : " We " will have no trouble between you and I, and what are you " going to do about it ? " To the best of my recollection I told Mr. Hamilton that I would let him know later on. I then telegraphed to our superintendent for instructions. Of course, we had instructions, but I merely wanted something to show the passenger that this was positive and no bluff, as it is termed on the part of the conductor, as I had found in nine cases out of ten perhaps, it would always work when the message was shown

to the passenger that it was positive to sign the ticket or pay the fare, they would sign the ticket. I told Mr. Hamilton, I believe, that the ticket—I could not exchange any portion of it unless it was signed by him, and returned it to him unpunched; did not punch the ticket, and I did not recognize it as a ticket. The instructions were, unless the ticket was signed of a foreign issue, it would be of no value, and virtually it was no ticket at all; it was merely the form of a ticket, and was not complete until the signature of a passenger was affixed to it. Those were my instructions from the company. I just merely took the ticket in my hand and looked at it, and returned it to Mr. Hamilton, after he refused to sign it, and I believe he had it in his possession all the time. I did not punch the ticket at all. To the best of my recollection I asked him as politely as I possibly could to sign the ticket, perhaps I am a little rough in my way, but just as polite as I am talking now, and did not harass him in any way about it. I asked him to sign the ticket and told him I could not recognize it unless he did do it, and I could not exchange it. In those days we had what we called a paster. The paster was about the length of two coupons. The top portion of the paster was the passenger's name and the number of the train, and the date leaving Ogden; I think the bottom portion was the destination. There were several destinations on the back of the ticket. Now, on this ticket we would take off from Ogden to Los Angeles, paste the upper portion of the paster on the two coupons, with the passenger's name and the number of the ticket on there, also the number of the train and date. In place of the two coupons we placed the bottom portion of the paster, and on the back we would punch out the destination "Los Angeles," leaving the contract portion of the ticket and the coupon from Los Angeles to San Diego on the paster. On the paster would be in one corner "By the way of San Francisco," if the ticket went that way; if it did not, this would not be punched out at all. You understand if it was by the way of San Francisco, this would be punched out "By the way of San Francisco;" on the other hand it would not, and it would go from Sacramento. In taking those coupons off and pasting the other on, it would not either increase or decrease the value of the ticket whatever, but remained just the same as it would in the first place; and, of course, I could not take this paster and give a proper description of the ticket unless I had the passenger's name and copied it from the ticket, which I could not get. My instructions, or the rules of the company, required this paster for exchange tickets on the train.

These pasters have no connection whatever with the contract portion. It merely takes the place of the coupons taken off. There are two punch marks on this ticket. I did not punch it, and I was the conductor on the first division. There were three conductors between Lovelocks and Ogden. One of them (punches) indicates a baggage check; the other I suppose is a conductor's punch mark. That conductor's punch mark does not indicate that it is a first-class unlimited ticket. The punch mark in here would indicate that somebody had made a mistake. Those tickets are not supposed to pass the first conductor.

If the plaintiff in this case, Mr. Hamilton, had affixed his signature to that ticket when I asked him to do it, I would not have punched the ticket; I would have exchanged it. My objection to the ticket was that it was not a ticket; it was merely a form of a ticket, and lacked the signature to complete it. I never handled a ticket like this without a signature with the conductor's punch mark, on the Southern Pacific; they never were allowed to pass the first conductor. They were not allowed to pass; they were exchanged by orders of the general passenger and ticket agent. But they were exchanged only after the signature was attached and not before. It was not the object of putting on that paster and making this exchange, so that the party cannot ride any further than San Francisco; the exchange would have read to

99 Los Angeles the same as the two coupons would, by the way of San Francisco, and the coupon would remain on that carries him to San Diego. It is not my understanding as a conductor that the effect of that exchange was to prevent its negotiability, and whether the effect is what I have stated or not, I was simply obeying instructions. I am not now in the employ of the company, and have not been for some time, something over a year, I think.

Plaintiff rests.

Whereupon counsel for defendant moves the Court, upon the evidence of the plaintiff, to instruct the jury to find a verdict for the defendant, upon the ground and for the reason stated in their written motion, which is in the words and figures following, to wit:

[Title of the Court and Cause.]

Now comes the defendant in the above-entitled action and moves the court for an instruction directing the jury to find a verdict herein for the defendant upon the following grounds, to wit:

First.

That it is shown by the evidence upon the part of the plaintiff that said plaintiff, at the time the servants of the defendant attempted to remove him from the train, and also at the time he was actually removed from the train by the officer, he was a trespasser upon said train, without any ticket or evidence in his possession of his right to be transported thereon; that he refused to pay his fare, sign the ticket in his possession, or to leave the train, when requested by the servants of the defendant, 100 and for the reason that under such circumstances the servants of the defendant were in law justified in attempting to remove him, and the officer was justified in removing him therefrom, using no more force than was necessary for that purpose.

Second.

For the reason that it is shown by the evidence that the defendant did not at any time contract with plaintiff to carry him as a passenger from or to any point upon the line or lines of the defendant's road, and for the reason that the defendant never at any time contracted, promised or agreed to so carry or transport plaintiff.

Third.

For the reason that it is shown by the evidence that the defendant did not at any time sell to plaintiff the ticket or any ticket by virtue of which plaintiff had a right to claim passage upon defendant's train.

Fourth.

For the reason that the evidence shows that the ticket broker who sold such pretended ticket to plaintiff at Denver, in the State of Colorado, was not in any sense the agent of the defendant in the sale thereof, nor did such ticket broker have authority to sell such ticket, or negotiate with plaintiff for transportation over its road.

Fifth.

For the reason that the evidence shows that the plaintiff was not the purchaser of said ticket from the Union Pacific Railroad Company, and that said ticket was not presented to the agent of the defendant by the original holder thereof. That 101 said ticket had been transferred by the original purchaser thereof, and that the same was void in the hands of any other person than such original purchaser.

Sixth.

For the reason that the evidence shows that the officer who removed plaintiff from the train of the defendant, and those who gave him information concerning the defendant, had reasonable grounds for believing that plaintiff had committed a felony, and for the reason that the complaint filed against plaintiff and the warrant issued thereon were regular upon their face and were issued by a court having jurisdiction, and in this action plaintiff is not entitled to recover damages for the act or acts of the officer in connection with or in making the arrest of plaintiff.

That said request or motion was signed by the attorneys for the defendant, and was regularly filed in said cause by the clerk of said Court upon the 14th day of November, 1891.

That the court then and there refused to give such instruction to the jury as requested by the defendant, to which ruling defendant then and there duly excepted.

102 G. H. DERBYSHIRE was then called for the defendant, and being sworn testified as follows:

I am a conductor on the Southern Pacific road; have held that position for 10 or 11 years.

The ticket exhibited is an unsigned unlimited ticket. It is a first-class ticket.

The Court—It is admitted that this is a first-class unlimited ticket—not denied; that is my understanding that they don't deny it is a first-class unlimited ticket.

Mr. Baker—I don't know in what sense the gentleman uses the word unlimited.

Mr. Derbyshire—I think I know what an unlimited ticket is. An unlimited ticket is one that can be used at any time by the proper persons. It is limited as to persons.

Q. Then if I buy a ticket at Winnemucca for Reno and give it to somebody else, he can't ride on it?

A. Not if it is a contract ticket.

Q. Yes, but what kind of a ticket would that be that I would buy that they sell from Winnemucca to Reno?

A. It would be first-class unlimited, without any contract, and that ticket is good for anybody and passes to the holder—to whomsoever holds it. As to time this ticket is not limited; it can be ridden upon at any time; but that ticket could be changed to a limited ticket by punching out the dates on the margin (showing dates to be punched). If it is left unpunched it is first-class unlimited. If limited, punch here (indicating place); there would be an L punched on the margin there.

Cross-examination.

The rules of the company require that a contract unlimited ticket should be signed equally with a contract limited ticket, and the letter L in the margin of the ticket simply has reference to time, and if it is otherwise punched as to train.

W. G. CASE, called for defendant and sworn, testified as follows:

I am at present a conductor on the Southern Pacific road from Wells to Winnemucca; was also a conductor in January, 1889, over the same run. Believe I have seen the plaintiff, Mr. Hamilton. He was a passenger on the train of the company of which I was conductor, in the month of January, 1889. Mr. Hamilton presented a ticket that was not signed, and I requested him to sign the ticket; he refused to do it, and I let it pass, waiting for instructions, and during the day, probably two or three times, I talked the matter over with him, asking him to sign the ticket, and I believe I punched the ticket; but that would not indicate that the ticket was genuine, even if I done that; and I got several messages from the general office requesting me to use every possible means to persuade him to sign his ticket, but he still refused, and I did not get the final instructions until it was too late for me to act in the matter, and I let him pass to the next division. I approached Hamilton as I would approach any passenger that I had business with, and talked with him in the matter of signing
104 his ticket. I don't think I used any loud or boisterous language, or insulting language, or anything of that kind, nor did not have any quarrel with him that I know of. I asked him to sign the ticket because I could not recognize the ticket without it was signed. My instructions called for those tickets—for the signatures of the passengers on all those tickets—and we could not recognize them unless they were signed. My instructions were to require the signature or not recognize the ticket, and I informed Mr. Hamilton that I could not recognize the ticket as a right of passage by him unless he signed his name to it. Mr. Hamilton said he did not see fit to sign it; he refused to sign it. I believe I showed him the message I received requiring ticket to be signed, and even after seeing that message he declined to sign. I did not harass or annoy Mr. Hamilton in the premises unnecessarily. I merely asked him to sign the ticket, and tried to induce him to do it.

Cross-examination.

I have been working for the Southern Pacific Company about twenty-two years. The contents of that dispatch that I showed him said, "that a ticket unsigned was valueless, and should be

“considered as a piece of waste paper,” or something to that effect, without his signature that it could not be recognized for passage, and to treat the passenger as if he had no ticket. The dispatch was from Mr. Goodman, General Passenger and Ticket Agent of the Southern Pacific Company. I am still working for the company. This punch mark in the ticket is my punch mark.

G. H. DERBYSHIRE, recalled for the defendant, testified as follows :

I was in the employ of the Southern Pacific Company in January, 1889, and was running the train from Winnemucca to Truckee. I recollect the circumstances of Mr. Hamilton, the plaintiff, being on my train and presenting me a ticket for passage. I recognize the ticket in evidence as similar to the ticket he presented to me, and I think that is the same one. I had a conversation with Mr. Hamilton in regard to it. I asked him for his ticket and he presented this, and I passed it back and asked him to sign it, which he refused, and I asked him his reasons for not signing it, and he said that he had been harassed enough over the ticket and would not sign it. I asked him again to sign it, and he said he could not write. I took my pencil out and said, “Make your mark and I will sign it for you;” and he said, “If you sign it, I will have you arrested for forgery;” and several times during the journey I asked him to sign the ticket and stated to him why I wanted him to sign it. I asked him if he had seen the message which was sent by Mr. Goodman, and he said that he had. I told him those were my reasons for wanting him to sign the ticket, or pay his fare, but he declined to do either. I stated to him that I could not recognize the ticket without his signature. When I asked him if he had seen the message I referred to the message from Mr. Goodman in reference to the ticket. In fact, I had it in my hand; he said he had read it already. The contents of that message was substantially to inform the passenger that the ticket unsigned was a worthless piece of paper, and to use all peaceable means to get his signature, or treat him as though he had no ticket at all. He said he had already seen the message, and after its exhibition to him he declined to sign the ticket or pay his fare. I then informed him that I would have to put him off the train—eject him from the train. I did attempt to eject him from the train at Rye Patch but was unsuccessful. The whole transaction occurred in this way: I asked him if he would get off the train peaceably of his own accord, and he said he would not. He said, “You will have to carry me off.” I said all right, I would try and carry him off, and as I took hold of him he took hold of an arm rest under the window-sill and put his toes under the heater pipe, and I could not budge him.

I asked a brakeman to assist me, and the two of us could not stir him. I finally released my hold and told the brakeman to go after the baggage man. I stepped out of the car onto the platform, out of his sight, on the west end of the car, and when I returned he had just taken his pistol out of a grip, and was getting up on the back of the seat about the middle of the car, about 18 feet from where I was, and as he got up he threw his hand up over the handrailing and pulled his gun down on me—his pistol—and I went. The baggage man, however, did not come into the car. I did not go in either after that.

107 In my attempt to release his hold in the seat he was in I took hold of his wrists and tried to release him from the arm rests. Did not take hold of his collar or any portion of his body besides the wrist. Brakeman Grant assisted me; did not notice what hold, if any, Mr. Grant had, but in the effort we made we were both unsuccessful in budging him from his seat. We were probably two minutes in trying to remove him, but did not take particular notice as to time, did not use any violence of any kind, or attempt to strike him, just simply pulled and tried to release his hold, and did not pull hard enough to release his hold on the arm rail. I then sent a message to Mr. Whitehead, at Wadsworth, the Division Superintendent, that a man on the train had pulled a pistol on me—a six-shooter, I think I worded it—and asked to have him taken off; asked him to have him taken off at Lovelocks. I could not remember now exactly how it was worded. I wanted him taken off for pulling the gun on me; and I did not dare to go into the car again while he was in it.

When I came to Lovelocks I had a conversation with Constable Cousins; I don't remember whether he spoke first or I did; anyway he wanted to know where that man was that pulled the gun, and I told him, and there was a gentleman standing on the platform by the name of Patterson; I stepped up and said, "Mr. Patterson will point him out to you." I did not have much love for pointing him out, but I did tell Mr. Cousins what he did. I stated to Cousins, as near as I can now recollect, that he had pulled a gun on me, and I would like to have him taken off the train. That was all that transpired—all the conversation.

108 I did not say anything to the officer in regard to any trouble I had had with him about a ticket. He was taken off there, and the train went on.

Q. Do you now recollect whether you stated to the officer as to how he looked or what kind of a gun he had, or anything of that kind?

A. I told him—the officer—he had a large-sized Colt's. I think I said about that long (showing, about a foot and a half). I might have exaggerated it, and I otherwise cautioned him to look out for him.

The rules of the company in regard to this kind of a ticket were to require the signature of the passenger or collect fare, and this I attempted to do and was unsuccessful. It wasn't any arbitrary demand upon my part; I was simply following the instructions of my employers.

Cross-examination.

Mr. Patterson was the passenger car inspector for the Southern Pacific Company, and his duties extended all over the system.

At these times when I was interviewing Mr. Hamilton to get him to sign this ticket, I told him that I would eject him if he would not sign the ticket or pay his passage. He did not interfere with me when I did not with him in any way. He was perfectly quiet when I let him alone.

In my application to Mr. Hamilton to sign the ticket, I think I was gentlemanly; talked to him the same as we are talking now; was not boisterous, and did not attempt in any way to
109 call the attention of the passengers in the train to the conversation that I had with him. I was not molesting him when he pointed the pistol at me. I stated in response to a question from Mr. MacMillan that he did not interfere with me when I did not with him, but after I went out on the platform, and when I came back, he had the pistol leveled on me and pointed at me, and I was not then attempting in any way to interfere with him when he was pointing the pistol at me. I was about eighteen feet from him when he pointed the pistol at me.

Mr. MacMillan—Q. Now, is it not a fact that you were waiting for the reinforcement of this big baggage man to tackle him again—the three of you? You say you were not interfering with him when he pointed the pistol at you; well, is it not a fact that you were just waiting until you got the reinforcement of this baggage man, and you and the brakeman and the baggage man were going to tackle him again? Was that not your intention?

A. Well, yes; we would have.

Q. You are sure, Mr. Derbyshire, that he pointed the pistol right at you?

A. Yes, sir.

Q. You could not be mistaken?

A. No, sir.

Q. Was it after dark?

A. There was a light in the sleeper.

Q. Well, I mean was it after dark in the daytime?

A. Yes, sir.

Q. I want to know that for other purposes.

110 A. Well, it was dark.

Q. They had lit up the lights of the sleeper at the time?

A. Yes, sir.

Q. What time of day was it, do you know?

A. We arrived there at 5:55 or 6:05.

Q. Arrived where?

A. At Rye Patch.

HERMANN A. GRANT, called for the defendant, being sworn, testified as follows:

I was a brakeman on the passenger train of the defendant the day that Mr. Hamilton and Mr. Derbyshire, the conductor, had some trouble on the train. I assisted Derbyshire in trying to remove Hamilton. The conductor requested me to go in and assist him to put Mr. Hamilton off. Going in the car he told me that he should not injure him or hurt him in any way. We went in the car, and the conductor requested Mr. Hamilton to sign his ticket. Mr. Hamilton positively refused to do so. The conductor took a hold of his right arm to lead him out of the car, and Mr. Hamilton resisted and took hold of the arm rest. The conductor then took hold of his wrist of one hand, as near as I can remember, and I took hold of the other, to free his hands; and, when we got his hands free to go to take any other hold, his hands would slip, and he would get a hold again; so we stopped then, and the conductor told me to go and
111 get the baggage man, and I went out after the baggage man; and I was coming in the car, and just as I came in Mr. Hamilton was getting up on his seat; he put his hand over the curtain rod, and he had a pistol in his hand directed towards us, and says, as near as I can remember: "Come on, now; the first man that attempts to touch me or put me off I will shoot. I am crazy." The conductor told me that would do, and we left the car. The second time we went in there was somebody followed me into the end of the car, but I don't think they came any further than the anteroom. Mr. Derbyshire was nearer the end of the car when I left the car. We both stopped a moment and looked at Mr. Hamilton a moment and then left. I did not go into the car before we got to Lovelocks.

Cross-examination.

I do not know every hold I had of Mr. Hamilton during the time we were engaged in this struggle with him, but I remember having hold of his wrist. I was trying to remove him from there without hurting him, without watching where I was taking hold of him, and trying not to hurt Mr. Hamilton in any way. Mr. Hamilton was facing the west, and I think whenever I would get his hand loose I would use my other arm to try and get a hold around his shoulder; as near as I can remember we

were all three struggling. I remember Mr. Derbyshire having hold of his wrist once. I happened to see that he had a hold of his wrist the same time I did. I was not watching Mr. Derbyshire's hold, but it was not hard to see it all, because it
 112 was a small place. When I went back into the car Mr. Hamilton had his head between the curtain rail and the berth and pointed his pistol at us. I was then a brakeman and am a brakeman now.

J. H. WHITE, called for the defendant, being sworn, testified as follows :

The position I occupied with reference to defendant in the month of January, 1889, was division superintendent for them.

I received a communication from Conductor Derbyshire upon or about the 26th of January of that year with reference to a transaction occurring on the train. The first information I received was from Rye Patch, that a passenger or party on the train had drawn a six-shooter and stood him off, and asked if he could be arrested at Lovelocks. I then sent a message to the agent—the station agent at Lovelocks—what Conductor Derbyshire had told me by wire, and asked him to have an officer there when the train arrived. Did not have any information at the time I gave that order to our agent at Lovelocks that there was any dispute between the passenger and conductor over a ticket. And my order to the agent at Lovelocks was based upon the information that a man had stood off a conductor with a six-shooter.

Cross-examination.

I have been working for the defendant about twenty-one
 113 years, at Wadsworth about twelve years.

Mr. Derbyshire worked for the defendant company while I have been at Wadsworth. I am well acquainted with him and have a great deal of confidence in him. I was his superior officer, and it was his duty to report to me. In certain matters connected with running of trains and conduct of passengers I was subject to orders. I sent this word to the agent at Lovelocks by telegram. I saw that dispatch yesterday, signed J. H. W.; that is the ordinary way I sign my name. I did sign my name to that dispatch in that way, and the contents of that dispatch is what I sent. That is the way I signed all my official dispatches to employees generally.

ROBERT A. DONALDSON, being called as a witness on behalf of the defendant, and having been first duly sworn, testified as follows :

I am Assistant General Passenger Agent of the Pacific System of the Southern Pacific Company. I have been engaged in that

occupation since the organization of the Southern Pacific Company, and its operation in two systems, the Atlantic and Pacific. I cannot give you the exact date. It runs back nearly five years.

I have been in the passenger department of the Central Pacific Railroad, and the Southern Pacific Railroad, and the Southern Pacific Company, three distinct organizations, commencing in July, 1871, continuously in that service.

The Central Pacific Railroad extends from San Francisco, California, to Ogden, in Utah; it connects with the Union Pacific Railway at that point. They are separate and distinct corporations, the Central Pacific, Southern Pacific and Union Pacific. The Southern Pacific Company operates the line extending from San Francisco to Ogden, with some branches, a line extending from San Francisco to Portland, in Oregon, and a line extending from San Francisco to El Paso, in Texas. It also operates (now named the Atlantic System) a line extending from El Paso, Texas, to New Orleans, in Louisiana.

I have examined the ticket introduced in evidence here; I saw it here, and examined it on the former trial.

The western terminus of the Southern Pacific Company, as represented upon that ticket is Los Angeles, and the eastern terminus, Ogden, and that ticket runs over the line of the defendant from Ogden to Los Angeles by way of San Francisco.

At the time this ticket was sold, a ticket from Omaha to San Diego, by way of San Francisco and Los Angeles, if first class, would have sold at \$64.00, if second class at \$35.00.

Of the \$64.00, if my memory serves me right, our company would have received \$33.42; our local rate from Ogden to Los Angeles by way of San Francisco at that time was \$50.00, so that a person purchasing a ticket at Ogden instead of at Omaha over our road would have paid \$50.00, and we would only receive \$33.42 on this ticket; so a ticket was sold at Omaha for a much less price than the sum of the locals over the two roads. The rates between our road and the Union Pacific road at the time this ticket was sold, or prior to that, were fixed by agreements between the parties and the Transcontinental Association. The Transcontinental Association is an association consisting of different railroad companies, in general terms the different railroad companies operating between St. Paul and Minneapolis on the north, and the Pacific Coast, and those operating between Missouri River from Omaha, Council Bluffs, St. Joseph and Missouri River points down as far as Kansas City, and the Pacific Coast. On the north is the Canadian Pacific Railroad, the Northern Pacific road, and in the central territory the Union Pacific, the Burlington road, and the D. & R. G. And, on the south, the Atchison, Topeka & Santa Fe system, the Southern Pacific

Company, and, going still further south, the Missouri Pacific, and the St. Louis & San Francisco Railroad.

The paper you hand me contains the names of the roads that were members of the association on November 24th, 1888; shows at the foot the names of the officers of the roads who were in charge of the passenger and ticket service of the different companies. It is a notice to general passenger and ticket agents of connecting roads, from the office of the chairman of the association—a notice sent under the direct instructions of the association.

This is one of the circulars as printed by the chairman and received by us from the chairman, and is the only form now existing at all as far as I know. It is prepared by the chairman, a copy furnished the printer, printed, a proof copy is read, and, when in accordance with the chairman's copy, printed and distributed to the members and to other roads interested. After the copy is submitted to the printer and this was stricken
116 off by the printer, the manuscript which was handed to the printer, I presume, would be in the printer's hands or destroyed by him.

The names of the roads, members of the association, are printed in full at the top of this circular; the names of the officers in charge of the ticket and passenger service appear at the foot; the names of each official connected with the road, and the Union Pacific Company, was, at this time, a member of this Transcontinental Association.

Circular offered and received in evidence.

Witness states it is a circular entitled, "Circular No. P. D. 16." That is, it is a circular numbered 16, from the passenger department of the Transcontinental Association.

"P. D." means passenger department.

"Circular No. P. D. 16" is as follows:

" TRANSCONTINENTAL ASSOCIATION,
" PASSENGER DEPARTMENT.

" ST. LOUIS, Mo., November 24th, 1888.

" *To the General Passenger and Ticket Agents:*

" Your attention is called to Circular No. P. D. 16, issued by
" this association March 17th, 1888, authorizing the checking
" of excess baggage through the Pacific Coast points, over lines
" in this association, and requesting that the form of excess
" check recommended by the National Association of General
" Baggage Agents be used. Also to Circular No. 9, D. 8, issued
" June 7th, 1888, requesting that tickets, all classes, to Pacific
" Coast points, be signed by purchasers, in the presence of
117 " ticket agents, and that baggage agents be instructed
" not to check excess baggage to Pacific Coast points un-
" less the signature of purchaser is affixed to contract of ticket.

“ As certain eastern connections have not complied with the
 “ above requests, nor signified their intention to do so, notice is
 “ hereby given to such lines as do not desire to use the form of
 “ excess-baggage check prescribed by this association, that they
 “ must not check excess baggage destined to Pacific Coast points
 “ beyond the Transcontinental Association eastern terminals.
 “ And to those lines not willing to require the signature of pur-
 “ chasers to be affixed to the contracts of tickets, that such
 “ tickets will not be accepted for passage unless signed, and
 “ that baggage covered by unsigned tickets must not be checked
 “ beyond Transcontinental Association eastern terminals.

“ W. A. BISSELL, G. P. & T. A.,
 “ A. & P. R. R.

“ H. C. TOWNSEND, G. P. & T. A.,
 “ Missouri Pac. Ry.

“ GEO. T. NICHOLSON, G. P. & T. A.,
 “ A. T. & S. F. R. R.

“ CHAS. S. FEE, G. P. & T. A.,
 “ Northern Pac. Ry.

“ J. FRANCIS, G. P. & T. A.,
 “ B. & M. R. R. in Nebraska.

“ A. L. MACWELL, G. P. & T. A.,
 “ Or. Ry. & Nav. Co.

“ H. B. WILKINS, G. F. & P. A.,
 “ Cal. Cent. Ry. & Cal. Sou. R. R.

“ J. S. TEBBETS, G. P. A.,
 “ Union Pac. Ry. & Or. Short Line.

“ LUCIUS TUTTLE, Pass. Traffic Mgr.,
 “ Canadian Pac. Ry.

“ D. WISHART, G. P. & T. A.,
 “ St. L. & San Fran. Ry.

“ JNO. SEBASTIAN, G. P. & T. A.,
 “ C. K. & Neb. Ry.

“ F. I. WHITNEY, G. P. & T. A.,
 “ St. P. M. & M. Ry.

“ S. K. HOOPER, G. P. & T. A.,
 “ D. & R. G. Ry.

“ W. C. WATSON, G. P. & T. A.,
 “ S. P. Co. (Atlantic Sys.)

“ J. H. BENNETT, G. F. & P. A.,
 “ D. & R. G. W. Ry.

“ T. H. GOODMAN, G. P. & T. A.,
 “ S. P. Co. (Pac. Sys.)

“ GEO. ADY, G. P. & T. A.,
 “ D. T. & Ft. W. R. R.

“ B. W. McCULLOUGH, G. P. & T. A.,
 “ Texas & Pacific Ry.

“ J. S. LEEDS, Chairman.”

Witness Donaldson continues:

When that notice was prepared it was distributed to all the railroads in the association, and it was in operation in the month of December, 1888, and the month of January, 1889.

These forms of tickets are agreed upon, usually, either in personal conference between the general passenger and general ticket agents of the roads concerned, or by correspondence.

The Southern Pacific Company and the Union Pacific Railroad had agreed upon a form which is substantially this form.

That is, they had agreed upon certain points that were embodied in the contract on this ticket; they are expressed in the railroad expression, which specifies the contract as an ironclad, non-transferable, signature contract, that is, a ticket that must be signed by the purchaser.

Our company has a rule, and it is customary for the first conductor on leaving Ogden, or the train ticket agent, if there be one on the train, to take up every foreign road ticket that leads over the Central Pacific road, if the destination is on the Central Pacific road, or on the Southern Pacific road, the entire ticket is taken up. If it should be a ticket passing from Ogden over any portion of the Central Pacific road, as for example, to Reno, then over the Virginia and Truckee road to Carson City, our conductor would take up our coupon from Ogden to Reno—take up that coupon only. In return for which he would give what we designate as a conductor's check, which gives him the same rights exactly, no more or less, than he would have on the original ticket or coupon taken up. The check would be exactly the same as the ticket or coupon taken up. We would give a second or third-class check for a second or third-class coupon. We would give a first-class check for a first-class ticket or coupon. Our object in making the exchange is easily explained. Passengers from Ogden to San Francisco, for instance, a first-class passenger having that right might take six months to reach his destination. If the coupon or ticket were not taken up at that time, the company would have nothing within its hands for six months upon which to make its claim upon the selling roads. Again, the ticket might have come in, a man might go to Reno or to San Francisco, and might stop over at Reno forever, and keep the coupon in his pocket. Unless the company took the coupon into its hands, it would have no way of knowing it was getting its money, or making a claim on the selling road. For that reason the company takes up the coupons and issues its checks.

By the term limited ticket, as used, as you say, in railroad parlance, we understand a ticket which can be used only within a certain time, or upon a certain train. And upon the other hand, the opposite fact, an unlimited ticket, one upon

which no limit is placed as to the time in which its use must be commenced, or as to the train upon which it may be used. I use the language as to the time in which its use may be commenced advisedly. It does not leave the ticket absolutely without limit as to the time in which it may be used, because different railroads have different rules as to the number of stop-overs they will allow on other roads, or the number of days they will allow upon a stop-over. To illustrate, an unlimited ticket locally from Ogden to San Francisco is without limit, you might say, as to the time in which it can be used. You can stop over on it at every station upon the line of the road, upon getting a stop-over check from the conductor; and there is no limit placed upon the time in which your stop-over check can be used. Whereas, on a road like the Union Pacific, they may place, and sometimes do place, a limit upon the time they will allow you to stop over. They may give you ten days,—limit the stop-over to ten days—and that puts a limit on the time in which an unlimited ticket could be used, in going from Omaha to Ogden. Upon the Erie & New York, if I recollect right, they will allow two or three days to a stop-over, and only two or three stop-overs, and yet the tickets, in railroad language, are known as unlimited tickets.

The Court—The Southern Pacific Company has no limit as to stop-overs.

We make no limit on the number of stop-overs that a passenger may make in passing between our terminals on our full first-class tickets, neither as to the number of stops, nor the kind of the stops. You may judge what we do when I tell you that we have honored stop-over checks twenty years old. That is the extent of the meaning of the words “limited and unlimited” as used by the railway company and as known among railroad men.

This (exhibiting a pamphlet) is a book of rules and regulations for agents and conductors as published by the Central Pacific Railroad Company under date of January 1st, 1884, from the office of the General Passenger and Ticket Agent, and used by its successor, the Southern Pacific Company, until October, 1889, I think, when another one was published. Those rules were in force by the Southern Pacific Company in December, 1888, and in January, 1889.

Sections 38, 45 and 49 of this pamphlet, containing the rules and regulations for agents and conductors, dated January 1st, 1884, were offered and received in evidence and read as follows:

“The Central Pacific Railroad Company and Leased Lines.

“Rules and Regulations for Agents and Conductors, January 1st, 1884.”

122 Section 38 reads as follows :

“ Section 38. Conductors must decline to recognize any ticket whatever, issued by a connecting railway line, if reading over this company’s lines, from Ogden, the Needles, Deming or El Paso, unless it bears a contract duly signed by the agent who sold the tickets.

“ Conductors, when refusing to accept tickets issued by connecting railways, must request the holders thereof to purchase tickets to destination at first ticket station, and to take the agent’s receipt therefor, and must refer the passenger to our office for any refund necessary or proper to be made, of the value of a ticket so purchased.

“ Conductors, in such cases, by first train mail, or by wire, if necessary, the name of the passenger, his destination, and a description in full of the ticket refused for passage and of the local ticket purchased.

“ Agents at Ogden, the Needles, Deming and El Paso must consider this rule as applying to the acceptance of such tickets when offered to secure the checking of baggage.”

“ Section 48. Conductors must, without delay, inform this office by telegraph of any contract ticket of any class offered for passage which does not bear the proper manuscript signature of the passenger, or which has expired, and in doing so must state all the circumstances, and especially the full description of the ticket, to wit: Road issued by, class, form number, consecutive number, office number, date, etc., and must decline to honor any such contract ticket until signed
“ by the passenger.”

123 “ Section 49. Conductors on leaving Ogden, the Needles, Deming, or El Paso, must lift our coupon or portion of all original tickets issued by connecting lines, and give passengers, in exchange therefor, a conductor’s check, of the proper form and class.”

Cross-examination of Mr. Donaldson.

Those were the rules and regulations of the Southern Pacific Company in January, 1889, for the guidance of its agents and its conductors.

Q. Do you know of your own knowledge—I will ask you, in the first place, do you know this Mr. Luty who has testified on this stand in this case, the conductor from Ogden to Wells, on the 26th of January, 1889, on the train on which plaintiff was, and from which he was ejected ?

A. I never saw conductor Luty until I saw him on the stand, although I knew there was a conductor by that name on the road.

I do not know whether a copy of these rules and regulations had been given to him for his guidance on that day, or at any time prior to that day, of my own personal knowledge, but I know a copy had been forwarded for the guidance of Mr. Case, and also, I think, to Mr. Luty.

Your question was, whether a copy was forwarded for his guidance. Your first question was, whether I knew a copy was in the hands of Mr. Luty. Those rules were sent to the division superintendent for them to supply the conductors.

124 Q. Your testimony is the same as Mr. Derbyshire, that simply copies were sent to the division superintendent of the Southern Pacific Company, to be distributed. Please answer me this question. How is it all these three conductors, Luty, Case and Derbyshire, had been furnished with copies of these rules and regulations, and yet that they kept telegraphing for instructions as to what to do with this plaintiff's ticket?

A. Because their instructions are to give the passenger the benefit of any doubt, and to enable him—give him every opportunity—to comply with the rules, and not to enforce any hardship upon him until he refuses, after reasonable effort.

Q. If Derbyshire, Case and Luty can understand plain English, what was the necessity for them to telegraph for instructions as to what to do, when this passenger refused to sign his name to this ticket?

A. Simply a desire, if possible, to relieve the company from any claim or any danger of suit, and to put the whole burden upon the passenger.

Mr. Woodburn—I want to introduce in evidence Rule No. 37, in this Exhibit B.

The Court—Read it in evidence.

Mr. Woodburn—I read section 37:

“Section 37. Conductors must examine tickets issued by
 “connecting railway lines, so as to be certain of the class and
 “destination thereof, and also whether limited time tickets, or
 “unlimited. If the destination is a point on our lines, it will
 “be shown by the contract portion of the ticket, which
 125 “should bear the signature of the general passenger or
 “general ticket agent of the company which issues the
 “ticket, and should have attached thereto a coupon or check
 “reading over the C. P. R. R. or S. P. R. R. If the destination
 “is a point beyond or off this company's lines, the ticket should
 “have a coupon or check attached thereto, reading over the
 “C. P. R. R. or S. P. R. R. An unlimited ticket will not specify
 “in any manner a date before which, or a time within which,
 “it must be used. A limited time ticket will usually show a
 “date of expiration (year, month and day of month) by punch
 “marks thereon in the column set for that purpose on the con-
 “tract, and will usually bear also a punch mark of the letter
 “‘L’ upon each coupon upon the contract.

“A limited time ticket, if second class, may indicate the class in one of several ways, to wit: 1st. By the words ‘second class’ or ‘2nd class’ being written, stamped, printed or punched on the contract, and upon each check attached thereto. 2nd. By a punch of the character ‘2nd,’ in a space set upon the contract, and upon each check bearing the characters ‘1st’, ‘2nd’ ‘class.’ 3rd. By punching in such a space the character ‘1st’ when the contract says unpunched figures designate the class.”

Re-direct Examination.

Examine this paper, Mr. Donaldson,* and state what it is. (Counsel hands paper to witness.)

A. It is a copy of a Circular No. 30, issued under date of June 1st, 1884, for the Central Pacific Railroad Company, and its leased lines, including the Southern Pacific Railroad, by Mr. Goodman, as General Passenger and Ticket Agent, indicating to foreign roads—giving to foreign roads—certain information in regard to rates, to points on the Central Pacific Railroad, and the Southern Pacific Railroad, the company’s proportion of the rates to points to which tickets were desired; the points to which it was desired they should be sold, and certain information as to the conditions under which the ticket could be sold, the character of ticket, the form of ticket, what the contract should carry, with samples of the contract which it was desired should be adhered to. Also samples of the ticket that the company was selling eastward, to foreign-road points; that circular was in force in December, 1888, by the Southern Pacific Company, and copies of this circular were sent to all roads that were selling tickets over our company’s roads, at the time of its issuance, the Union Pacific Company being one.

Sections 10, 11 and 12 of this circular in evidence.

The Court—Let those sections be admitted and read as follows:

“CIRCULAR 30.

“SAN FRANCISCO, June 1st, 1884.

“*To Foreign Roads:*

“The following rates via Ogden to points on this company’s line and divisions thereof, in effect May 15th, 1884, are given for the information of connecting lines.

“Section 10. In printing new forms of through tickets reading via Ogden, Utah, we must most respectfully request and insist that Eastern connections, in order to preserve uniformity, comply fully with the provisions and requirements of our company, and that they at once withdraw from sale all tickets not in conformity therewith.

“ Our conductors have been instructed to refuse for passage all
 “ tickets of the non-signature, non-contract, transferable style.
 “ Our requests for through tickets are limited to a minimum
 “ number of destinations, and one form (of the combination
 “ style) for each class, reduces our list to the smallest practicable
 “ number. See samples on page 3.

“ Section 11. We must request all roads having ‘skeleton’
 “ tickets reading over our road to withdraw them from sale.”

“ Section 12. Tickets of all classes must be made to conform
 “ to the requirements of a resolution, as adopted at meeting
 “ of the Transcontinental Association held in Chicago, com-
 “ mencing January 9th, 1884, reading as follows :

“ “That tickets of all classes must be made non-transferable,
 “ “and must bear signature of purchaser, and of selling agents
 “ “as witness thereto, and must include the following, viz :
 “ “This ticket is non-transferable, and if presented by any
 “ “other person than the original holder, whose signature is
 “ “hereon, conductors will take it up and collect full fare. The
 “ “holder will write his or her signature when required by con-
 “ “ductors or agents.’ Through tickets will not be recognized
 “ for checking of baggage, or for passage on trains, until the
 “ proper manuscript signature is affixed in ink, in the blank for
 “ that purpose on the face and contract of the same.”

Defendant rests.

128 The above and foregoing comprises all of the evidence
 given and received in the case, so far as the same has
 any relevancy to the issues involved upon the writ of error
 herein.

At the conclusion of the evidence the Court of its own motion
 gave the following instructions to the jury :

The Court—Before proceeding to instruct the jury in this case,
 I wish to say to the counsel engaged in it that it has given me
 great pleasure to observe the manner in which this case has
 been treated by counsel. It has been an open, honest, manly
 and able contention for the points relied upon by them to sus-
 tain their respective rights in this case, and I don't know but
 what I owe counsel some apology, perhaps, for the interruptions
 which I made during the progress of the argument. I know
 that at times it has a tendency to disconcert the line of argu-
 ment, and the connection in the discussion of legal principles.
 I can only say in that respect that it was through an earnest
 desire on my part to reach the truth in this case, and by means
 of these interruptions to get at the direct points that were relied
 upon by counsel, and to draw out from them on each side the
 views which they entertained in relation to the case.

Before proceeding to give these instructions I wish to say also to the jury, as well as to counsel, that in giving the instructions to the jury it must be understood in the outset that 129 the instructions of the Court apply specially to a given state of facts, and that in all I may have to say—because there are many questions concerning the validity and issuance of railroad tickets—depends to a great extent upon the particular ticket which is in controversy in this case. The rules that may be applied in this case would have no bearing or relation to other tickets of different forms, of different kinds and of different characters. There are some general principles, however, that apply to most all cases.

Now, gentlemen of the jury, I wish to say to you that the attention which you have given to this case is creditable to you and pleasant to me. I noticed that during the entire trial whenever a witness was called upon the stand, or when the testimony of any witness that had been introduced upon the former trial was read, that you paid particular attention to it, and I therefore deem it necessary to call your particular attention at this time to the facts of this case, because you must be as well versed in regard to them as I am myself.

It has been repeated by counsel, and you have also noticed, that there are but very few points upon which there is any controversy whatever in the testimony.

You are instructed that railroad companies have the right to adopt and enforce reasonable rules and regulations for the safe, convenient, and orderly conduct of their business, to secure the proper accommodations and convenience of passengers, and for the purpose of protecting themselves from imposition or fraud ; and it is the duty of passengers to conform to such rules.

130 If the holder of a valid railroad ticket refuses to comply with any reasonable rule or regulation of the railroad company when requested so to do by the agents or conductors of such company, the railroad company has the right to eject him from the cars, using only such moderate force as may be necessary to secure his removal.

You are instructed that the defendant, the Southern Pacific Company, and the Union Pacific Company, had the right to adopt the form of ticket to be sold and used over each other's lines, and that, in selling the ticket in question, the Union Pacific Company acted as special agent of the defendant, and the defendant was not bound to honor the ticket unless it was in the form, and issued in the manner, agreed upon by both parties or by the defendant. In purchasing a ticket from a person who was not an agent of the railroad company, the plaintiff was bound to examine the ticket to see if it was genuine, and to read the conditions printed thereon, and would be bound by the reasonable conditions and rules so printed. The fact that the

ticket was purchased from a ticket broker who was not authorized by the railroad company (defendant) to sell the same does not confer upon the purchaser any greater right or privilege than if he had purchased a ticket from a regular or special agent of the railroad company.

Now, gentlemen of the jury, you have heard this ticket read a dozen times or more, but it becomes necessary for me to read it again, in giving you instructions in regard to it. Some comment has been made in regard to which I deem it necessary to give you some instruction relative to the printing
131 upon the face of this ticket. I instruct you, in the first place, that the head of this ticket, the white letters upon the dark ground, relates to the matter of limiting the liability of the railroad company for baggage that may be lost. It has no special application at all to this case, and the rules which apply to that question are different from the rules in regard to the other portions of the ticket. There may be and doubtless are cases where that printing would make it necessary to give the jury some instructions in regard to it, but as far as this case is concerned I pass that portion of the ticket as having no bearing upon the questions at issue in this case.

This ticket reads: "Good for one passage of class indicated, " to point on California Central Railway between punch marks, " subject to the following conditions: 1st. If this contract"—and here let me say it is unnecessary to decide whether this should be treated as a contract or as a receipt for money to obtain passage over the line of the road. The same rules will apply, and for brevity we will designate it, as it has been by counsel, a contract.—"If this contract and its coupons bear no cancellation " or stamp, other than the ordinary dating stamp, the holder is " entitled to an unlimited, first-class passage; otherwise the unpunched figure above or below the word 'class' on this ticket " and its coupon indicates its class."

It is claimed that this or a portion of this ticket is printed in larger type than the other portions of the ticket, and therefore that fact would have something to do in determining its meaning. This would be wholly immaterial
132 if the entire contract was printed in plain and clear language. The fact that certain words upon it are printed in large letters and the others in smaller type would make no difference. There has been some stress laid upon the fact that, if that was torn off there, then it would be transferable; there would be nothing on the ticket to indicate that it was not transferable; if it was torn off at that point, that would make it a different ticket. In construing this ticket, however, it is the duty of the Court to construe all the conditions; they may be taken as an entirety, this ticket itself, just as it is with no portion detached.

The second provision is: "If the contract and coupons are punched with the letter 'L,' then this ticket was sold at a reduced rate, and the holder is entitled to the privileges accorded to a limited ticket; and this ticket is subject to exchange, in whole or part, for a continuous passage ticket; and any line over which it reads may decline to honor the ticket unless presented in time to reach its destination by or before midnight of the date punched in the margin."

Now, it must be remembered that this ticket is in a form that can be used either as a first-class unlimited ticket, or a limited ticket, or a second-class ticket. If it is a second-class ticket it would be punched as stated in the ticket, and that would make it second class. If it is a limited ticket, it is punched with the letter "L," as exhibited in one of the tickets offered in evidence, and that would make it a limited ticket.

If it was a first-class unlimited ticket there would be no cancellation or stamp other than the ordinary dating stamp—no letter "L" punched.

So far as this ticket is concerned it is a first-class unlimited ticket, subject to the conditions which are printed on its face.

The third—and this is most material—"If not so used, and if more than one date is cancelled, or if presented by any person other than the original holder, this ticket is void, and conductor will take up and collect full fare." That applies to the ticket in either form. If the ticket was used as a second-class or a limited ticket, and if more than one date is cancelled, it would apply to certain conditions of the ticket, "or, if presented by any person other than the *original holder*, this ticket is void, and conductor will take up and collect full fare." That applies to the whole ticket. "Any alterations or erasures will render this ticket void." That, you will remember, was withdrawn from the consideration of the jury at my suggestion, it appearing at the former trial that some testimony was given, and some reliance placed upon that, and it being admitted that there is no testimony showing alterations or erasures in this case, it is entirely withdrawn from the consideration of the jury.

The next subdivision is, "No stop-over on this ticket at an intermediate point will be allowed, unless specially provided for by the local regulations of the lines over which it reads." That has reference to the entire ticket.

The next section is: "The holder will write his or her signature when required by conductors or agents." Then there is another clause which has not been referred to, and has no bearing. This ticket, you will notice, bears upon its face, first a blank space and then the word "signature," and it is signed by the agent of the Union Pacific Company.

I instruct you that the testimony in this case is that that form of ticket was adopted by the two companies, and that they were

required, in order to make that ticket good over other lines than their own, the party selling it must require the purchaser to attach his signature. And if he accepted the ticket without signing it he, nevertheless, would be bound by that rule when he reached the line of the defendant company.

It necessarily follows, from what I have already said, that the ticket which was presented by Hamilton at Ogden was not such a ticket as defendant, the Southern Pacific Company, was bound to honor. And if you believe that the agents of the company, at the time he went upon their train, notified him that the ticket in that form was not such as they were entitled to honor, and that, unless he signed his name, he would not be allowed to travel upon it, or, in other words, that he would have trouble with the conductor, the conductor had the right to request him, on the presentation of that ticket, to sign his name. That was the only objection made to it. If he had signed his name, the testimony is that he would have been allowed to travel upon that ticket as a first-class unlimited ticket. If he refused to sign his name, pay his fare or leave the train, then the conductors or agents of the defendant had the right to use as much force as was necessary, and no more, in order to remove him from the train.

135 You are instructed that a party cannot increase his compensation or his measure of damages by reason of his refusal to leave a train upon being informed by the conductor that he cannot accept the ticket presented as evidence of right to be carried. The conductor, for the time being, is the judge of the passenger's right, and the railway company is responsible to the passenger for any mistake which the conductor makes, affecting the rights of the passenger in the premises, but is entitled, owing to his position, and the responsibilities dependent upon the ~~same~~^{safe} and orderly conduct of a passenger train, to interpret and enforce the rules of the company in accordance with his judgment, and the passenger being informed of the demands of the conductor must submit thereto, and either pay his fare or leave the train, and if the conductor is in the wrong seek redress by an action against the corporation for damages. And in this case, if you find from the evidence that the conductors of the defendant informed plaintiff that they would not receive or honor the ticket presented by the plaintiff, and that he should either sign the ticket, pay his fare or leave the train, and that he declined to comply with either of said requests, he cannot increase his compensation by attempting to defend his position upon the train by the use of a weapon, or by inviting the resort to superior force to remove him therefrom. A passenger should not be permitted to invite a wrong and then complain of it.

You will withdraw from your consideration any acts upon the part of the agents of the defendant in their attempt to remove plaintiff from the train prior to reaching Lovelocks, 136 because, under the instructions I have given you, plaintiff has no cause of action against defendant for any acts that occurred previous to that time, if at any time.

A peace officer who, in response to the invitation of the regular agents of the company, assists in ejecting a passenger, becomes a special agent of the company for that purpose, and is subject to the same rule in regard to excessive violence in executing the regulations of the company.

The question as to the cause of plaintiff's arrest at Lovelocks is a mixed question of law and fact. If the jury believe from the evidence, from a consideration of all the attendant and surrounding circumstances, as testified to by the various witnesses upon this trial, that the agents of defendant caused the arrest of plaintiff to be made by a peace officer at Lovelocks simply as a means to the end of ejecting or removing plaintiff from the car, on the ground that he had refused to sign his name, pay his fare or leave the car, then such officer should be treated as the special agent of the defendant for that purpose, and the defendant would be liable for his acts in the same manner and to the same extent as if the officer's acts had been committed by a regular agent of the defendant.

But if you believe from the evidence that the plaintiff was removed from defendant's train by an officer of the law in the official discharge of his duties on a criminal charge made upon a reasonable cause of the commission of a felony by plaintiff, and the agents of the defendant who authorized plaintiff's arrest, and that the officer who made the arrest 137 believed such charge, then I instruct you that such officer had the right to arrest plaintiff and detain him upon such charge, and the defendant cannot be held responsible for such arrest or detention in this action. An officer may, upon reasonable cause appearing therefor, arrest a person for the commission of a felony, although no felony was in fact committed.

The statutes of the State of Nevada provide that an arrest is the taking of a person into custody, that he may be held to answer for a public offense. An arrest may be either:

- 1st. By a peace officer under a warrant;
- 2nd. By a peace officer without a warrant;
- 3rd. By a private person.

A peace officer may without a warrant arrest a person:

1st. For a public offense committed or attempted in his presence.

2nd. Where the person arrested has committed a felony, although not in his presence.

3rd. Where a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.

4th. On a charge made upon reasonable cause of the commission of a felony by the party arrested.

The statute further provides that when arresting a person without a warrant the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offense, or when he is pursued immediately after an escape.

The question as to what constitutes reasonable cause
138 depends, to a great extent, upon the facts of each particular case. The construction, upon one hand, ought not to be so strict as not to protect the officer in the discharge of his duties, and on the other hand it ought not to be so liberal as to jeopardize the liberty and rights of the individual citizen. There should be a reasonable ground of suspicion supported by circumstances sufficient to warrant the officer in believing that the party is guilty of the offense charged against him.

You are instructed that if, under the instructions I have already given you, you find for the plaintiff, you will only award such damages as will compensate him for such loss of time and necessary expense as you believe were occasioned by his removal from defendant's train, as well as for the bodily pain and mental anguish he may have suffered by reason of the acts of defendant's agents. But you are not entitled to consider or assess either punitive or vindictive damages, unless you believe from the evidence that the defendant's agents acted in a malicious, wanton or reckless manner. And in this connection you must bear in mind that plaintiff is not entitled to recover any damages at all unless you believe from the evidence that defendant's agents ejected him from the car at Lovelocks on account of his refusal to sign the ticket, pay his fare or leave the train, and in doing so used more force or harsher treatment than was reasonable or necessary to eject him from the train. If the injury complained of was inflicted maliciously or wantonly, and with circumstances

of contumely or indignity, the jury are not limited to the
139 ascertainment of a single compensation for the wrong committed against the aggrieved person, but may give punitive or exemplary damages. But, in order to warrant the giving of punitive or exemplary damages, the malice must not be understood as merely the doing of an unlawful or injurious act. The word malicious, in cases of this character, implies that the wrong complained of was committed in the spirit of mischief or criminal indifference to civil obligations.

You are instructed that the burden of proof is upon the plaintiff to satisfy you by a preponderance of evidence of the truth of every fact necessary to entitle him to a verdict at your hands.

In the absence of such proof you should find a verdict for the defendant.

Now, gentlemen of the jury, I believe I have instructed you upon all the legal points which are involved in this case. The case now rests with you. When you go to your jury room appoint some one of your number as foreman, consider this case and all facts in relation to it, and the instructions which have been given to you by the Court, in the same spirit of fairness that you have exhibited upon the trial, and without bias, prejudice or favor, but, prompted solely by a desire simply to reach the ends of justice, decide this case between the plaintiff and the defendant.

The form of your verdict, in case you should find for defendant, will be: "We, the jury in the above cause, find for the defendant." The other form will be: "We, the jury in the above cause, find for the plaintiff, and assess the damages in the sum of \$———," to be designated by you.

140 *The Court*—I think counsel had better write out their exceptions and file them with the clerk, and they will be considered as made in open court.

Whereupon the defendant made and filed its exceptions to said charge as follows:

[Title of the Court and Cause.]

The defendant excepts to all that portion of the instructions of the Court to the jury in said action wherein the Court submits to said jury as a question of fact whether or not the officer, Eugene Cozzens, in arresting the plaintiff at Lovelocks station, upon the night of January 26th, 1889, made such arrest because the plaintiff refused to sign the ticket in question, or pay his fare or leave the train, or because the plaintiff had made a criminal assault upon Conductor Derbyshire; for the reason and upon the ground that there was no testimony in the case tending to show that the officer had any knowledge prior to making the arrest that there had been any trouble between the plaintiff and the conductors of the defendant growing out of any dispute over a ticket, or that he made such arrest for any cause or reason other than that he had been informed and believed that the plaintiff had committed an assault with a deadly weapon upon the person of Conductor Derbyshire, and that such arrest was made by him solely upon that ground.

That said exception was signed by the attorneys of defendant and duly filed in said cause in said court by the clerk thereof upon the 14th day of November, 1891, and before the
141 retiring of the jury to consider upon their verdict.

Thereafter, upon the 14th day of November, 1891, the jury retired in charge of the marshal to consider upon their verdict, and upon said day returned with the following verdict:

“ In the Circuit Court of the United States, Ninth Circuit,
 “ District of Nevada. *Asa M. Hamilton, plaintiff, vs. The Southern*
 “ *Pacific Company, defendant.* We, the jury in the above cause,
 “ find for the plaintiff, and assess the damages in the sum of
 “ \$44,750.00.

“ GEO. H. MEYERS, *Foreman.*”

Upon the 16th day of November, 1891, a judgment was duly given and made in said court upon said verdict, which is in words and figures as follows, to wit:

142 In the Circuit Court of the United States, Ninth Circuit,
 and District of Nevada.

ASA M. HAMILTON, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a corporation), Defendant.

} No.
 } 522.

This cause came on regularly for trial at the November term, 1891, of this court, by a jury duly empaneled and sworn to try the issue between the plaintiff and the defendant. The parties appeared by their attorneys of record, introduced their proofs, argued and submitted the cause.

Thereupon, and after receiving the instructions given by the court, the jury retired in charge of the marshal to consider their verdict, and subsequently returned and presented the same, to wit:

“ In the Circuit Court of the United States, for the Dis-
 “ trict of Nevada, *Asa M. Hamilton vs. Southern Pacific Company.*
 “ We, the jury in the above cause, find for plaintiff, and assess
 “ the damages in the sum of forty-four thousand seven hun-
 “ dred and fifty dollars (\$44,750.00).

“ GEO. H. MEYERS, *Foreman.*

“ November 14, 1891.”

In consideration whereof it is ordered and adjudged
 143 that said plaintiff do have and recover of and from the
 said defendant the said sum of forty-four thousand seven
 hundred and fifty dollars, with costs of suit, taxed at \$——.

Attest:

T. J. EDWARDS, *Clerk.*

Entered November 16, 1891.

144 The defendant (plaintiff in error herein) being dissat-
 isfied with said verdict and judgment, and feeling
 aggrieved thereby, and within the time allowed by the rules and
 practice of said court, filed and served its notice of motion for a
 new trial herein, which said motion is in the words and figures
 following, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

ASA M. HAMILTON, Plaintiff,
 vs.
 SOUTHERN PACIFIC COMPANY, Defendant. }

Notice of Motion for New Trial.

You will please take notice that the defendant in the above-entitled action will, upon Monday, the 7th day of December, 1891, at 10 o'clock A. M. of the said day, or as soon thereafter as counsel can be heard, at the courtroom of said court in Carson City, Nevada, move said court to vacate and set aside the verdict of the jury and judgment entered therein in 145 favor of the said plaintiff and against this defendant, and to grant a new trial in said action for the following reasons and upon the following grounds, to wit :

First.

Errors of law occurring at the trial, and excepted to by the defendant, to wit :

a. The Court erred in refusing to instruct the jury to find a verdict for the defendant, as prayed for by the defendant in its written motion presented to the Judge of said court at the conclusion of plaintiff's testimony, and filed and of record in said court, upon each and every ground mentioned and set out in said motion.

b. The Court erred in submitting to the jury as a question of fact whether or not the officer, Eugene Cozzens, in arresting the plaintiff at Lovelocks station, upon the night of January 26th, 1889, made such arrest because the plaintiff refused to sign the ticket in his possession, or pay his fare or leave the train, or because the plaintiff had made a criminal assault upon the conductor of the train, George Derbyshire ; upon the ground and for the reason that there was no evidence in the case which put that fact in controversy ; the evidence upon the part of the plaintiff conclusively showed that the officer in making the arrest acted in his official capacity, upon information received, and upon reasonable belief, that the plaintiff had committed a felony, and that the arrest was made upon *that* ground and *solely* for that reason and none other ; and this proof upon the part of the plaintiff was not only not controverted or disputed by 146 the defendant, but was in fact supported and corroborated by the defendant's testimony, and the Court therefore erred in submitting that question to the jury as a controverted issue of fact.

Second.

Insufficiency of the evidence to support or maintain the verdict and judgment, and that said verdict and judgment are contrary to the evidence in this, to wit:

a. The evidence conclusively and without dispute shows that the plaintiff was attempting to ride upon the train of the defendant without any ticket in his possession which entitled him to be carried.

b. That he was notified by the agents and conductors of the defendant that he could not proceed upon his journey upon the ticket in its then condition, and that he should either sign the ticket, pay his fare or leave the train.

c. That the plaintiff persistently refused to comply with any or either of said requests, and admits that they were repeatedly made and insisted upon by the conductors and train agents.

d. That when Rye Patch was reached, and a final request was made upon the plaintiff to sign his ticket, pay his fare or leave the train, he again refused, and the conductor and a brakeman attempted to expel him from the car, but the attempt was unsuccessful, and additional help from amongst the train hands was summoned.

e. That, before any reinforcement to the conductor was secured, the plaintiff armed himself with a deadly weapon, to wit, a loaded revolver, and threatened to kill any person
147 who attempted to further interfere with him, or try to remove him from the train, and was so threatening and belligerent in his manner and behavior as to place the conductor in great fear of his life and drive him from the car.

f. That the conductor telegraphed to his division superintendent, J. H. Whited, that a passenger had drawn a pistol upon him, and in response to which the superintendent telegraphed to the agent at Lovelocks of that fact, and to secure the services of an officer of the law and have him at the train upon the arrival of the train at the station.

g. That, upon the arrival of the train at the station, the officer appeared and inquired of the conductor who the man was, and the conductor was afraid to enter the car to point him out, but notified the officer that he was wild and had a pistol about a foot in length.

h. That the officer with an assistant, Teffner by name, and who was in no way connected with the defendant, arrested the plaintiff by placing handcuffs upon him, and removing him from the car.

That neither the officer who made the arrest, nor the superintendent, nor Donaldson, who ordered it, knew anything of the controversy between the plaintiff and the train agents or con-

ductor of the defendant, growing out of the plaintiff's ticket, or of his refusal to sign the ticket, pay his fare or leave the train.

That upon the above facts, which were uncontroverted, and established by the proofs and all of the evidence in the case, the verdict should have been for the defendant.

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Third.

Because the only question submitted to the jury under the instructions of the Court was whether or not more force was used than was necessary in removing the plaintiff from the train, and the jury was not justified from the evidence in finding that excessive force was used, for the reason :

1st. That the plaintiff had refused to leave the train, and successfully resisted the conductor and brakeman, and drove them from the car with a deadly weapon, and threatened to shoot the first man who attempted to interfere with him.

2nd. That, at the time of his arrest he was in the possession of his revolver, and had the same in the waistband of his trousers, where it was of easy access in case its use became necessary.

3rd. That the officer in making the arrest used no excessive force or violence whatever, and only pursued a course which the dictates of prudence and his information as to the plaintiff's previous conduct justified.

Fourth.

Said verdict and judgment are contrary to law and the instructions of the Court, and the verdict is grossly excessive, and must have been influenced and rendered from feelings of passion and prejudice, instead of a fair and impartial consideration of the testimony, for the reason that there is no evidence in the case showing that the plaintiff ever suffered any actual damage whatever by reason of his removal from the train, or that he suffered

any bodily injury, or that the defendant or its agents, or
149 the officer of the law who made the arrest, acted in a wanton, willful or reckless manner, or that any or either of them were actuated by any malice, or through malicious motives; and under the evidence, if the plaintiff was entitled to recover at all, the damages should have been nominal.

Said motion will be made upon the minutes of the court, including the notes of the evidence taken by the Judge, as well as all the evidence given and received in the case and transcribed by the reporters, which shall include the whole testimony in the case, and all the rulings made therein and excepted to by the defendant, and all the pleadings and proceedings therein, on file with the clerk in the clerk's office of said court.

That said verdict was rendered upon the 14th day of November, 1891.

[Signed]

BAKER, WINES & DORSEY,
Attorneys for Defendant.

[Endorsed]: In the Circuit Court of the United States, Ninth Circuit, District of Nevada. *Asa M. Hamilton vs. Southern Pacific Company.* Notice of Motion for a New Trial. Filed November 21st, 1891. T. J. Edwards, Clerk.

Due service of the within by copy is hereby admitted
150 this 21st day of November, 1891.

WM. WOODBURN,
J. H. McMILLAN,
Attorneys for Plaintiff.

Thereafter, upon the 3rd day of February, 1892, being a day of the regular February term of said court, the said cause, upon defendant's motion for a new trial, was brought on regularly to be heard before said court, whereupon the following order was made by the court, and entered of record in its proceedings for that day:

ASA M. HAMILTON,
vs.
SOUTHERN PACIFIC COMPANY. }

The motion for a new trial herein was this day argued and submitted by counsel for the respective parties.

In consideration whereof, and in consideration of the fact that plaintiff has filed his consent that the judgment herein be reduced to \$15,000, it is hereby ordered that the motion for new trial be and is hereby denied, and that the judgment in this cause be and is reduced to the sum of \$15,000.

It is further ordered that execution be stayed for the period of fifteen days.

151 The defendant, Southern Pacific Company (plaintiff in error herein), feeling itself aggrieved by said judgment for the sum of \$15,000, and that the same and the whole thereof is contrary to both the law and the evidence, thereafter upon the 6th day of February, 1892, filed and presented to said court its petition for a writ of error to the United States Circuit Court of Appeals, Ninth Circuit, and filed with said petition its assignments of error therein, which said petition and assignments of error are in the words and figures following, to wit:

In the Circuit Court of the United States, Ninth Circuit, District
of Nevada.

SOUTHERN PACIFIC COMPANY, Plaintiff in Error,)
vs.)
ASA M. HAMILTON, Defendant in Error.)

Petition for Allowance of a Writ of Error.

*To the Honorable Judges of said United States Circuit Court in and
for the Ninth Circuit and District of Nevada.*

Honorable Thomas P. Hawley, D. J., presiding.

The Southern Pacific Company, a corporation, and the
152 plaintiff in error herein, would most respectfully repre-
sent to your Honor, as District Judge holding the Circuit
Court of the United States in and for said circuit and district,
that it is the defendant (and plaintiff in error in the proceedings
and action hereinafter mentioned) and that Asa M. Hamilton is
the plaintiff (and defendant in error in said action and pro-
ceedings).

That said action was originally brought in the District Court
of the State of Nevada, in and for the county of Humboldt in
said State, and was thereafter by due and regular proceedings
upon a petition and bond in due and proper form, upon motion
of the defendant herein (plaintiff in error here), duly transferred
from said State Court into the Circuit Court of the United
States for said Ninth Circuit and District, and thereafter pro-
ceeded in said Circuit Court, the same as if originally commenced
therein.

That thereafter, in the month of November, A. D., 1891, and
at the regular November term of said Circuit Court, the said
action came on to be heard in said court, before a jury duly and
regularly empaneled, and such proceedings were thereupon had
in said court, that a verdict was therein rendered by the jury in
said cause in favor of said plaintiff (defendant in error) for the
sum of \$44,750.00; and upon which verdict, and for said sum of
\$44,750.00, a judgment of said Court in favor of said defendant
in error was, upon the day said verdict was rendered, to wit,
November 14th, 1891, duly given and made. That afterwards,
to wit, upon the 21st day of November, 1891, and within
153 the time allowed by law and the rules and practice of
said court, the plaintiff in error filed and served its
motion for a new trial in said action, based upon errors apparent
upon the face of the records of said action, and specifically men-
tioned and set forth in said notice of motion, which is in the words
and figures following, to wit:

[Title of Court and Cause.]

Notice of Motion for a New Trial.

You will please take notice that the defendant in the above-entitled action will, upon Monday, the 7th day of December, 1891, at 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of said Court in Carson City, Nevada, move said Court to vacate and set aside the verdict of the jury and judgment entered therein in favor of the said plaintiff and against this defendant, and to grant a new trial in said action for the following reasons and upon the following grounds, to wit:

First.

Errors of law occurring at the trial and excepted to by the defendant, to wit:

a. The Court erred in refusing to instruct the jury to find a verdict for the defendant, as prayed for by the defendant in its written motion presented to the judge of said court at the conclusion of plaintiff's testimony, and filed and of record in said court, upon each and every ground mentioned and set out in said motion.

b. The Court erred in submitting to the jury as a question of fact whether or not the officer, Eugene Cozzens, in 154 arresting the plaintiff at Lovelocks station, upon the night of January 26th, 1889, made such arrest because the plaintiff refused to sign the ticket in his possession, or pay his fare or leave the train, or because the plaintiff had made a criminal assault upon the conductor of the train, George Derbyshire, upon the ground and for the reason that there was no evidence in the case which put that fact in controversy. The evidence upon the part of the plaintiff conclusively showed that the officer in making the arrest acted in his official capacity upon information received and upon reasonable belief that the plaintiff had committed a felony, and that the arrest was made upon *that* ground and *solely* for that reason and none other, and this proof upon the part of the plaintiff was not only not controverted or disputed by the defendant, but was, in fact, supported and corroborated by the defendant's testimony, and the Court therefore erred in submitting that question to the jury as a controverted issue of fact.

Second.

Insufficiency of the evidence to support or maintain the verdict and judgment, and that said verdict and judgment are contrary to the evidence in this, to wit:

a. The evidence conclusively and without dispute shows that the plaintiff was attempting to ride upon the trains of the defendant without any ticket in his possession which entitled him to be carried.

b. That he was notified by the agents and conductors of the defendant that he could not proceed upon his journey
155 upon the ticket in its then condition, and that he should either sign the ticket, pay his fare or leave the train.

c. That the plaintiff persistently refused to comply with any or either of said requests, and admits that they were repeatedly made and insisted upon by the conductors and train agents.

d. That when Rye Patch was reached, and a final request was made upon the plaintiff to sign his ticket, pay his fare or leave the train, he again refused, and the conductor and a brakeman attempted to expel him from the car, but the attempt was unsuccessful, and additional help from amongst the train hands was summoned.

e. That, before any reinforcement to the conductor was secured, the plaintiff armed himself with a deadly weapon, to wit, a loaded revolver, and threatened to kill any person who attempted to further interfere with him or try to remove him from the train, and was so threatening and belligerent in his manner and behavior as to place the conductor in great fear of his life and drive him from the car.

f. That the conductor telegraphed to his division superintendent, J. H. Whited, that a passenger had drawn a pistol upon him, and in response to which the superintendent telegraphed to the agent at Lovelocks of that fact, and to secure the services of an officer of the law, and have him at the train upon the arrival of the train at the station.

g. That upon the arrival of the train at the station the officer appeared and inquired of the conductor who the man was, and the conductor was afraid to enter the car to
156 point him out, but notified the officer that he was wild, and had a pistol about a foot in length.

h. That the officer with an assistant, Teffner by name, and who was in no way connected with the defendant, arrested the plaintiff by placing handcuffs upon him, and removing him from the car.

That neither the officer who made the arrest, nor the superintendent, nor Donaldson who ordered it, knew anything of the controversy between the plaintiff and the train agents or conductors of the defendant, growing out of the plaintiff's ticket, or of his refusal to sign the ticket, pay his fare or leave the train.

That upon the above facts, which were uncontroverted, and established by the proofs and all of the evidence in the case, the verdict should have been for the defendant.

Third.

Because the only question submitted to the jury under the instructions of the Court was whether or not more force was used than was necessary in removing the plaintiff from the train, and the jury was not justified from the evidence in finding that excessive force was used, for the reason:

1st. That the plaintiff had refused to leave the train, and successfully resisted the conductor and brakeman, and drove them from the car with a deadly weapon, and threatened to shoot the first man who attempted to interfere with him.

2nd. That at the time of his arrest he was in the possession of his revolver, and had the same in the waistband of his trousers, where it was of easy access in case its use
157 became necessary.

3d. That the officer in making the arrest used no excessive force or violence whatever, and only pursued a course which the dictates of prudence and his information as to the plaintiff's previous conduct justified.

Fourth.

Said verdict and judgment are contrary to law and the instructions of the Court, and the verdict is grossly excessive, and must have been influenced and rendered from feelings of passion and prejudice, instead of a fair and impartial consideration of the testimony, for the reason that there is no evidence in the case showing that the plaintiff ever suffered any actual damages whatever by reason of his removal from the train, or that he suffered any bodily injury, or that the defendant or its agents, or the officer of the law who made the arrest, acted in a wanton, willful or reckless manner, or that any or either of them were actuated by any malice or through malicious motives; and under the evidence, if the plaintiff was entitled to recover at all, the damages should have been nominal.

Said motion will be made upon the minutes of the court, including the notes of the evidence taken by the Judge, as well as all the evidence given and received in the case and transcribed by the reporters, which shall include the whole testimony in the case, and all the rulings made therein and excepted to by the defendant, and all the pleadings and proceedings therein on file with the clerk in the clerk's office of said court.

158 That said verdict was rendered upon the 14th day of November, 1891.

[Signed]

BAKER, WINES & DORSEY,

Attorneys for Defendant.

[Endorsed]: In the Circuit Court of the United States, Ninth Circuit, District of Nevada. *Asa M. Hamilton vs. Southern Pacific Company*. Notice of Motion for a New Trial. Filed November 21st, 1889. T. J. Edwards, Clerk.

Due service of the within by copy is hereby admitted this 21st day of November, 1891.

[Signed]

WM. WOODBURN AND
J. H. MACMILLAN,
Attorneys for Plaintiff.

That upon the 3d day of February, 1892, said motion for a new trial was regularly brought on to be heard before said Court, and such proceedings were therein had that the said Court made an order denying a new trial in said action, provided the said plaintiff (defendant in error herein) should within five days from said date enter his consent to accept the sum of fifteen thousand dollars, which said order of consent was thereupon by said plaintiff (defendant in error herein) immediately filed, 159 and a judgment was then and there by said Court duly given and made in favor of the said plaintiff (defendant in error herein) and against the defendant (the plaintiff in error herein) for the said sum of fifteen thousand dollars, together with costs, and the defendant's motion for a new trial was thereupon *denied*.

And the defendant in said action (plaintiff in error herein) being dissatisfied with the judgment made and entered in said action, and feeling itself aggrieved thereby, and by the action of the Court in awarding a judgment in favor of the said Asa M. Hamilton (defendant in error herein) for the sum of fifteen thousand dollars, and considering that said sum is grossly in excess of any damages shown by the evidence to have been suffered by the defendant in error, and that under the evidence the judgment should have been in favor of the plaintiff in error, and that said judgment is contrary to both the law and the evidence, comes now by its attorneys, Baker, Wines and Dorsey, and petitions said Court for an order allowing said defendant (plaintiff in error herein) to prosecute a writ of error to the Honorable the United States Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided.

And also that an order be made fixing the amount of security which the defendant (plaintiff in error herein) shall give and furnish upon said writ, to operate as a supersedeas in said action, and that upon the giving of such security all further proceedings in said Circuit Court be suspended and stayed until the determination of said cause upon said writ of error

160 by said United States Court of Appeals, and your petitioner as in duty bound will ever pray.

BAKER, WINES & DORSEY,
Attorneys for Plaintiff in Error.

[Endorsed]: In the Circuit Court of the United States, Ninth Circuit, District of Nevada. *Southern Pacific Company vs. Asa M. Hamilton.* Filed February 6, 1892. T. J. Edwards, Clerk.

161 In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

SOUTHERN PACIFIC COMPANY, Plaintiff in Error, }
vs. }
ASA M. HAMILTON, Defendant in Error. }

The Southern Pacific Company, plaintiff in error herein, having petitioned said court for an order permitting it to prosecute a writ of error to the Honorable The United States Circuit Court of Appeals for the Ninth Circuit, from the judgment made and entered in said cause, now makes and files with its said petition the following, and specifies the same as its assignment of errors herein, and upon which it will rely for a reversal of said judgment upon such writ.

First.

Errors in the instructions of the Court.

The Court erred in giving to the jury the following instructions, to wit:

“ The question as to the cause of the plaintiff’s arrest at Love-
“ locks is a mixed question of law and fact. If the jury
“ believe from the evidence, from a consideration of all the
“ attending and surrounding circumstances as testified to by
“ the various witnesses upon the trial, that the agents of
162 “ the defendant caused the arrest of plaintiff to be made
“ by a peace officer at Lovelocks simply as a means to
“ the end of ejecting or removing him from the car, on the
“ ground that he had refused to sign his name, pay his fare or
“ leave the car, then such officer should be treated as a special
“ agent for the defendant for that purpose, and the defendant
“ should be liable for his acts, in the same manner and to the
“ same extent as if the officer’s acts had been committed by a
“ regular agent of the defendant.

“ But if you believe from the evidence that the plaintiff was
“ removed from the defendant’s train by an officer of the law in
“ the official discharge of his duty, on a criminal charge made
“ upon a reasonable cause of the commission of a felony by
“ plaintiff, and that the agents of the defendant who authorized
“ plaintiff’s arrest, and that the officer who made the arrest,
“ believed such charge, then I instruct you that such officer had

“ the right to arrest plaintiff, and detain him upon such charge,
 “ and the defendant cannot be held responsible for such arrest
 “ and detention in this action.

“ An officer may, upon reasonable cause appearing therefor,
 “ arrest a person for the commission of a felony, although no
 “ felony was in fact committed,”—

for the reason that said instruction submits to the jury as a question of fact, to be ascertained by them, the capacity in which Eugene Cozzens acted in removing plaintiff from defendant's train at Lovelocks, whether as an officer of the law acting upon
 163 a criminal charge preferred against plaintiff, or as the agent or servant of the defendant because plaintiff had refused to pay his fare or leave the train, while in point of fact there was no evidence before the jury that said Cozzens acted in any save his official capacity, and the instruction submitting to the jury this question of agency was error under the uncontroverted and indisputable testimony in the case.

Second.

The Court erred in submitting to the jury as a question of fact whether or not the agent of the defendant in removing plaintiff from defendant's train used more force than was necessary to effect such removal, which said instruction was as follows, to wit :

“ You are instructed that if, under the instructions I have
 “ already given you, you find for the plaintiff, you will only
 “ award such damages as will compensate him for such loss of
 “ time and necessary expenses as you believe were occasioned by
 “ his removal from the train of defendant, as well as for the
 “ bodily pain and mental anguish he may have suffered by rea-
 “ son of the acts of defendant's agents ; but you are not entitled
 “ to consider or assess either punitive or vindictive damages
 “ unless you believe from the evidence that the defendant's
 “ agents acted in a malicious, wanton or reckless manner. And
 “ in this connection you must bear in mind that plaintiff is not
 “ entitled to recover any damages at all, unless you believe from
 “ the evidence that the defendant's agents ejected him from the
 “ car at Lovelocks on account of his refusal to sign the ticket,
 “ pay his fare or leave the train, and in doing so used force or
 “ harsher treatment than was reasonable or necessary to
 164 “ eject him from the train,”— for the reason,—

First.

That the plaintiff, as shown by the uncontradicted testimony, was not removed from defendant's train by any agent or employee of the defendant, but by an officer of the law, in the official discharge of his duties as such officer; and

Second.

The evidence clearly and indisputably, and without conflict, shows that only such force was used in removing the plaintiff from defendant's train as the dictates of prudence, and a due and proper regard for the lives of the officers and passengers on board the train, required; and which under the evidence should have been decided by the Court as a matter of law, instead of submitting it to the jury as a question of fact under the uncontradicted testimony in the case.

Third.

The Court erred in refusing to give to the jury the following instructions requested in writing by the defendant, to wit:

[Title of the Court and Cause.]

“ Now comes the defendant in the above-entitled action and
 “ moves the Court for an instruction directing the jury to
 “ find a verdict herein for the defendant upon the following
 “ grounds, to wit:

“ *First.* That it is shown by the evidence upon the part of the
 “ plaintiff that said plaintiff, at the time the servants of the de-
 “ fendant attempted to remove him from the train, and also at
 “ the time he was actually removed from the train by
 165 “ the officer, he was a trespasser upon said train without
 “ any ticket or evidence in his possession of his right to
 “ be transported thereon; that he refused to pay his fare, sign
 “ the ticket in his possession or leave the train when requested
 “ by the servants of the defendant, and for the reason that un-
 “ der such circumstances the servants of the defendant were in-
 “ law justified in attempting to remove him, and the officer
 “ was justified in removing him from the train, using no more
 “ force than was necessary for that purpose.

“ 2nd. For the reason that it is shown by the evidence that
 “ the defendant did not at any time contract with plaintiff to
 “ carry him as a passenger from or to any point upon the line
 “ or lines of the defendant's road, and for the reason that the
 “ defendant never at any time contracted, promised or agreed
 “ to so carry or transport plaintiff.

“ 3rd. For the reason that it is shown by the evidence that
 “ the defendant did not at any time sell to plaintiff the ticket
 “ or any ticket by virtue of which plaintiff had a right to claim
 “ passage upon defendant's train.

“ 4th. For the reason that the evidence shows that the ticket
 “ broker who sold such pretended ticket to plaintiff at Denver,
 “ in the State of Colorado, was not in any sense the agent of
 “ the defendant in the sale thereof, nor did such ticket broker

“ have authority to sell such ticket or negotiate with the plaintiff
 “ for transportation over its road.

“ 5th. For the reason that the evidence shows that the plain-
 “ tiff was not the purchaser of said ticket from the Union
 “ Pacific Railroad Company, and that said ticket was not
 166 “ presented to the agents of the defendant by the original
 “ holder thereof. That said ticket had been transferred
 “ by the original purchaser thereof, and that the same was void
 “ in the hands of any other person than such original purchaser.

“ 6th. For the reason that the evidence shows that the officer
 “ who removed plaintiff from the train of the defendant, and
 “ those who gave him information concerning the defendant, had
 “ reasonable grounds for believing that plaintiff had committed
 “ a felony, and for the reason that the complaint filed against
 “ plaintiff, and the warrant issued thereon, were regular upon
 “ their face and were issued by a court having jurisdiction, and
 “ in this action plaintiff is not entitled to recover damages for
 “ the act or acts of the officer in connection with or in making
 “ the arrest of plaintiff.”

That said request and motion as above set forth was made and
 presented to the Court before the jury were instructed by the
 Court in said cause ; but to grant said motion or to give said
 instructions to the jury, or any or either of them, the Court
 then and there refused, to which ruling the defendant by its
 attorneys then and there duly excepted.

The defendant also duly excepted to the giving by the Court
 of the instructions hereinbefore set forth in subdivisions first
 and second, and then and there filed its exceptions in writing
 in words and figures following, to wit :

[Title of the Court and Cause.]

“ The defendant excepts to all that portion of the instructions
 “ of the Court to the jury in said action wherein the Court
 “ submits to said jury, as a question of fact, whether or
 167 “ not the officer, Eugene Cozzens, in arresting the plain-
 “ tiff at Lovelocks station upon the night of January
 “ 26th, 1889, made such arrest because the plaintiff refused to
 “ sign the ticket in question, or pay his fare or leave the train,
 “ or because the plaintiff had made a criminal assault upon the
 “ Conductor Derbyshire ; for the reason and upon the ground
 “ that there was no testimony in the case tending to show that
 “ the officer had any knowledge prior to making the arrest that
 “ there had been any trouble between the plaintiff and the con-
 “ ductors of defendant, growing out of any dispute over a
 “ ticket, or that he made such arrest for any cause or reason
 “ other than that he had been informed and believed that the
 “ plaintiff had committed an assault with a deadly weapon upon

“ the person of Conductor Derbyshire, and that such arrest was
 “ made by him solely upon that ground.”

That said exceptions were signed by the attorneys for the defendant, and duly filed in said cause in said Court by the clerk thereof, upon the 14th day of November, 1891, before the jury retired to consider of their verdict.

That the Court erred in refusing to give to the jury the instructions so requested by the defendant, for the reason that upon the undisputed testimony in the case, and the law governing the rights of the plaintiff under the pretended ticket in question as laid down by the Court in its charge to the jury, there remained no question of fact which entitled the plaintiff to a verdict in his favor, and the refusal of the Court to so instruct the jury was error.

To the giving of the former instructions, and the refusal
 158 to give the last instruction, to wit, “To find a verdict in favor of the defendant,” the defendant then and there duly excepted, and such exceptions were then and there allowed.

Fourth.

The verdict of the jury, as modified by the court, and the judgment of the court entered upon said verdict for the sum of fifteen thousand dollars, is contrary to the evidence, and the evidence is insufficient to sustain said judgments of the court, and the same is clearly against the weight of the testimony in this, to wit:

1st. The evidence clearly and indisputably shows that the plaintiff was attempting to ride upon the train of the defendant without any ticket which entitled him to be transported over the defendant's road, as laid down by the charge of the Court to the jury.

2nd. That upon being informed by the agents and servants of the defendant that they could not honor the pretended ticket which he (plaintiff) had in his possession, or permit him to ride upon it unless he signed the same, he persistently refused to attach his signature to the ticket, pay his fare or leave the train.

3rd. That, when the train arrived at Rye Patch station, the agents and servants of the defendant attempted in a reasonable manner to remove him from the train without using excessive force or violence, and in such effort were wholly unsuccessful.

4th. That in attempting to secure additional help from
 169 other persons in charge of the train, and before such assistance was secured, the plaintiff armed himself with a deadly weapon, to wit, a Colt's navy revolver, and assuming an attitude of resistance in the car, with pistol in hand, warned the agents and servants of the defendant not to interfere with him further, and if they did that they would get hurt.

5th. That upon plaintiff resorting to the use of a deadly weapon, and assuming a violent and threatening attitude, the agents and servants of the defendant left the car and telegraphed to the division superintendent that a man on the train had drawn a pistol on them.

6th. The division superintendent then telegraphed to the agent at Lovelocks, stating that "Conductor Derbyshire telegraphs that a man on Number 4 had drawn a six-shooter on him. Have an officer on hand when No. 4 arrives. [Signed] J. H. W.'" These initials were admitted to be those of J. H. Whited, Division Superintendent of the defendant.

7th. That, when the train arrived at Lovelocks, Eugene Cozzens, the constable at that place, was at the depot, and was informed by Conductor Derbyshire that the plaintiff had drawn a pistol on him, and he would like to have him taken off the train for that reason. That he (plaintiff) had a pistol, indicating its length, to be about one foot long.

8th. That Constable Cozzens was also informed by the conductor who had charge of the train upon which plaintiff was riding that the plaintiff was "wild;" that he had a pistol about one foot in length, and that he (the conductor) was afraid to go into the car for the purpose of pointing out the plaintiff, and went away and armed himself and procured an assistant to make the arrest.

9th. That the reason he put handcuffs on the plaintiff in making the arrest was, to use the language of the officer, "because he was afraid the plaintiff would pull a gun on him, and make him run as well as the conductor." That he arrested plaintiff as an officer of the law, upon a criminal charge, which he believed had been committed by the plaintiff, and that such arrest had no reference whatever to any dispute over a ticket.

10th. That, after the arrest of plaintiff by the officer, he was taken with the handcuffs on to the place of business of such officer, and kept in that condition for from twenty minutes to one-half hour, when he was taken by the officer to the Justice's Court, and the handcuffs were then removed, and a complaint was filed against him, charging him with an assault with intent to do great bodily harm, upon which a warrant was regularly issued by the justice, and the plaintiff was held for examination, which was postponed at his request for three or four days, and which subsequently resulted in plaintiff's discharge from custody.

11th. That each and every witness on the part of the plaintiff and the defendant who was called and examined upon the question of the plaintiff's arrest and removal from the train testified that the arrest was made for the reason, and upon the ground *only*, that the plaintiff had drawn, upon the conductor of the

defendant's train, a deadly weapon in a hostile and threat-
 171 ening manner, and that such arrest and removal had no
 connection with, nor was it based upon, his refusal to
 sign his ticket, pay his fare or leave the train.

The judgment ordered by the court is clearly against the
 weight of evidence and all of the evidence, in this, to wit :

a. That the evidence shows without contradiction that plain-
 tiff was arrested and removed from the train of the defendant
 solely for the reason that a charge had been preferred against
 him ; that he had committed a felonious assault upon the con-
 ductor in charge of the defendant's train, and that the officer in
 so arresting him had reasonable grounds for believing, and did
 believe, that the plaintiff was guilty of such criminal charge.

b. The evidence also shows that plaintiff was not removed
 from the train of the defendant by reason of a refusal upon his
 part to pay his fare.

c. That the evidence clearly shows that the plaintiff was not
 removed or ejected from defendant's train by any agent or ser-
 vant of defendant, but was so ejected by a regular peace officer,
 acting in his official capacity, and in pursuance of, and in con-
 formity with, his official duty.

d. That the evidence without any contradiction shows that the
 officer, in arresting and removing the plaintiff from the train of
 the defendant, did not use or employ *unnecessary* or *unreasonable*
 force in accomplishing such arrest and removal, but that the
 evidence does conclusively show that ~~such~~ ^{plaintiff was} in fact, a desperate,
 172 determined and dangerous man ; that he was armed with a
 deadly weapon and threatened to shoot any person who
 interfered with or attempted to remove him from the
 train, and the evidence shows that the officer handcuffed the
 plaintiff *solely* and *only* for the purpose of making such arrest
 and removal with safety to himself, and the other passengers
 and people upon the train.

e. That handcuffs only remained upon the plaintiff from twenty
 to thirty minutes, or for such a length of time as satisfied the officer
 that they could be removed with safety, and that all of the evi-
 dence shows that the officer, as well as all of the agents and ser-
 vants of the defendant who preferred the charge against the
 plaintiff, acted in good faith, and upon justifiable grounds, and
 free from malice, wantonness, hatred or ill will.

f. That said judgment of fifteen thousand dollars awarded by
 the court upon the verdict of the jury in this case is not sup-
 ported by the evidence, is against the weight of the evidence,
 and is, under the uncontroverted testimony, unwarranted and
 excessive, for the reason that there is no evidence whatever of
 any loss or damage suffered by the plaintiff by reason of said
 arrest and detention, neither to his person nor his business, nor
 in any other manner whatever.

g. The verdict of the jury for \$44,750.00, and the judgment of the court entered thereon for the sum of \$15,000.00, was not and could not have been, under the evidence, based upon any estimation of actual loss or damages suffered by the plaintiff, and was therefore awarded as vindictive or punitive damages, in the nature of punishment or smart money, for arresting the plaintiff
173 and removing him from the train of the defendant, and upon which the court decided and so instructed the jury that the plaintiff was not entitled to ride; and there is no evidence whatever that the officer who made the arrest, or the agents of the defendant who preferred the charge, acted in a wanton or reckless manner, or were actuated by motives of malice or ill will toward the plaintiff, and therefore the infliction or punitive damages is unwarranted by the evidence and unconscionable.

Wherefore, by reason of the foregoing assignment of errors and the petition of the defendant (plaintiff in error herein) for leave to prosecute a writ of error herein to the United States Court of Appeals, Ninth Circuit, the plaintiff in error submits its said petition and these assignments of error, and prays for an order of this Honorable Court, allowing it to prosecute such writ to said Court of Appeals.

BAKER, WINES AND DORSEY,
Attorneys for Plaintiff in Error.

[Endorsed]: In the Circuit Court of the United States, Ninth Circuit, District of Nevada. *Southern Pacific Company vs. Asa M. Hamilton.* Filed February 6, 1892. T. J. Edwards, Clerk.

174 Order of Court entered February 6, 1892, allowing Writ of Error, etc.

ASA M. HAMILTON
vs.
SOUTHERN PACIFIC COMPANY. }

On motion of Mr. Wines, of counsel for defendant, it is ordered that a Writ of Error herein be and is hereby allowed; and that, in order to stay execution pending the Writ of Error, defendant shall file a supersedeas bond in the sum of twenty thousand dollars. It is further ordered that defendant's attorneys have leave to take from the clerk's office, temporarily, the depositions of Peter Simmons and M. L. Levy and other papers as desired.

In accordance with said order of the Court permitting the plaintiff in error herein to prosecute a Writ of Error in said action to the United States Circuit Court of Appeals, Ninth Circuit, and to stay executions pending the hearing of said writ, thereafter upon the 15th day of February, 1892, the

plaintiff in error executed and filed with the clerk of the Circuit Court of the United States, Ninth Circuit, District of Nevada, its bond upon Writ of Error, as follows :

175 In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.

SOUTHERN PACIFIC COMPANY, Plaintiff in Error,)
vs.)
ASA M. HAMILTON, Defendant in Error.)

Know all men by these presents, that we, Southern Pacific Company, as principal, and W. E. Brown and W. H. Mills, as sureties, are held and firmly bound unto Asa M. Hamilton, in the full and just sum of twenty thousand (\$20,000.00) dollars, and for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas, at a term of said Court of the United States, for the Ninth Circuit, District of Nevada, held at Carson City, Nevada, upon the third day of February, 1892, in a suit pending in said court between Asa M. Hamilton as plaintiff (defendant in error above named) and Southern Pacific Company, (plaintiff in error above named) a judgment was rendered against said above-named principal, Southern Pacific
176 Company, and in favor of said Asa M. Hamilton, for the sum of fifteen thousand (\$15,000.00) dollars; and

Whereas, upon the 6th day of February, 1892, the said Southern Pacific Company filed in said Court its petition for an order allowing it to prosecute a writ of error to the United States Circuit Court of Appeals, for the Ninth Circuit, and for an order of said Court fixing the amount of security which it shall be required to give to the plaintiff in said action pending the prosecution of said writ of error, to operate as a supersedeas and stay the issuance of execution until said writ of error shall have been heard and determined in said United States Circuit Court of Appeals ; and

Whereas, upon said 6th day of February, 1892, the said Circuit Court, upon said petition, duly made and had entered of record in said court an order allowing a writ of error in said action in favor of said Southern Pacific Company, plaintiff in error, from said judgment, to the United States Circuit Court of Appeals, Ninth Circuit, and in such order also fixed the amount of security which the said above-bounden principal should be required to give, pending the determination of said cause in

said Court of Appeals, and to stay execution herein, at the sum of twenty thousand (\$20,000.00) dollars.

Now the condition of the above obligation is such that if the said Southern Pacific Company shall prosecute said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void ; otherwise it shall be and remain in full force and virtue.

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SOUTHERN PACIFIC COMPANY,
By J. C. STUBBS,
Third Vice-President.
W. E. BROWN,
WM. H. MILLS.

UNITED STATES OF AMERICA, { ss.
Northern District of California.

W. E. Brown and W. H. Mills, being each duly and severally sworn, each for himself and not one for the other, says : That I am a surety upon the above undertaking, and reside in the city of San Francisco, State of California, and am a householder therein; and that I am worth the sum of twenty thousand (\$20,000.00) dollars over and above all of my just debts and liabilities, in property situated in said State of California, exclusive of property exempt from execution.

W. E. BROWN,
WM. H. MILLS.

Subscribed and sworn to before me this 15th day of February, A. D. 1892.

E. B. RYAN,
Notary Public in and for San Francisco, Cal.

The above bond upon writ of error is hereby approved, and execution stayed pending the determination of said writ.

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Dated February 15, 1892.

THOMAS P. HAWLEY.
U. S. Judge.

Respectfully submitted,
BAKER, WINES & DORSEY,
Attorneys for Southern Pacific Company, Plaintiff in Error.

The foregoing record and bill of exceptions is correct, and is hereby settled, approved and allowed this 21st day of March, 1892.

HAWLEY, *Judge.*

179 District of Nevada, ss.

T. J. Edwards, being first duly sworn, on oath says : That on the 12th day of March, 1892, at the hour of ten o'clock A. M. of that day, he duly served the foregoing bill of exceptions upon Wm. Woodburn, Esq., one of the attorneys of record

for said Asa M. Hamilton, by leaving a copy thereof in a conspicuous place in the law office of said Woodburn at Carson City, Nevada,—the said Woodburn being then and there present, but refused to accept service hereof.

T. J. EDWARDS.

Subscribed and sworn to before me this 23d day of March, 1892.

THOMAS P. HAWLEY,
U. S. Dist. Judge.

[Endorsed]: No. 522, U. S. Circuit Court, Dist. Nevada. *Hamilton vs. Southern Pacific Co.* Bill of Exceptions. Filed March 12, 1892. T. J. Edwards, Clerk.

180 Minutes of Court, showing withdrawal of demurrer, Nov. 4, 1891.

ASA M. HAMILTON
vs.
SOUTHERN PACIFIC CO. }

On motion of its attorney it is ordered that defendant have leave to withdraw its demurrer herein.

It is further ordered that the defendant have thirty days to answer the complaint.

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

ASA M. HAMILTON
vs.
SOUTHERN PACIFIC COMPANY. }

The plaintiff excepts to that portion of the instructions of the Court in the above-entitled cause in which the jury is instructed that the Union Pacific Company acted as the special agent of the defendant in selling the ticket in controversy, because the answer of the defendant, the ticket itself, the testimony of the clerk of the Union Pacific Company, and of E. K.

181 Luty, show that the Union Pacific Company was the general, and not the special, agent in issuing and selling said ticket. Such instruction is against the evidence.

Plaintiff excepts to that portion of said instruction in which the jury are directed that the conditions of the face of said ticket, exclusive of the first condition printed in large type on said ticket, which constitute a contract for a first-class, unlimited passage over the line of the defendant company, have reference to and govern the construction of the said contract, and that the words "original holder," in the 3d condition of said ticket, have reference to the contract for a first-class passage, on the ground the Court erred in the interpretation of the language and conditions of said ticket.

Plaintiff excepts to the instruction of the Court requiring the purchaser of a first-class, unlimited ticket to affix his signature thereto as a condition precedent to his right to ride thereon, and that such a rule is reasonable, on the ground the Court erred in the interpretation of said contract.

J. H. MACMILLAN & W. WOODBURN,
Attys. for Plff.

[Endorsed]: No. 522. In Circuit Court, Ninth Circuit, Dist. of Nevada. *Asa M. Hamilton vs. Southern Pacific Co., Deft.* Exceptions filed Nov. 20, 1891. T. J. Edwards, Clerk.

182 In the Circuit Court of the United States, Ninth Circuit,
District of Nevada.

ASA M. HAMILTON
vs.
THE SOUTHERN PACIFIC COMPANY.)

The plaintiff in the above-entitled action objects to the bill of exceptions filed on the 12th day of March, 1892, and to the settlement thereof, upon the ground and for the reason that the court has lost jurisdiction and control of said cause, and has not now any authority to settle said proposed bill of exceptions. That it is too late, the time having expired in which to allow, settle or present the bill of exceptions in said cause. That, under rule 22 of the rules of practice of this court, the bill of exceptions must be prepared in form and presented to the judge within ten days after verdict, and unless so prepared and presented the exceptions will be deemed waived. That no statement or bill of exceptions in support of the defendant's motion for a new trial was ever made or filed in said cause, and it is now too late, and the court has no authority to permit a statement or bill of exceptions after the motion for a new trial has been heard and denied. The record on appeal to the court of appeals must be the same record, and cannot be different from the record upon which the Court acted at the hearing of the motion for a new trial.

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J. H. MACMILLAN & W. WOODBURN,
Attys. for Plff.

[Endorsed]: In the Circuit Court, Ninth Circuit, Dist. of Nevada. *Asa M. Hamilton vs. The Southern Pacific Company.* Objections to the settlement of bill of exceptions proposed by defendant. Filed March 21, 1892. T. J. Edwards, Clerk.

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

ASA M. HAMILTON, Plaintiff.
vs.
 SOUTHERN PACIFIC COMPANY, Defendant. }

Now comes the defendant, through its attorneys, and moves to strike plaintiff's objections to the settlement of defendant's bill of exceptions from the files, upon the ground that the same were not filed in accordance with or by authority of law, custom, practice or rule, and was filed too late to entitle plaintiff to
 184 be heard thereon.

BAKER, WINES & DORSEY,
Attorneys for Defendant and Plaintiff in Error.

[Endorsed]: Circuit Court, Ninth Circuit, District of Nevada. *Asa M. Hamilton vs. Southern Pacific Company.* Motion to strike objections to Bill of Exceptions from the files. Filed March 21, 1892. T. J. Edwards, Clerk. Baker, Wines & Dorsey, Attys. for Deft. and Plff. in Error.

185 In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

ASA M. HAMILTON, Plaintiff,
vs.
 SOUTHERN PACIFIC COMPANY, Defendant. } No. 522.

I, T. J. Edwards, Clerk of the Circuit Court of the United States, for the Ninth Circuit, District of Nevada, do hereby certify the foregoing 182 type-written pages, numbered from 1 to 182, inclusive, to be a full and correct copy of the record and of the proceedings in the above and thereentitled cause, and that the same together constitute the return to the annexed writ of error.

[SEAL] In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court at my office in Carson City, Nevada, this 7th day of April, A. D. 1892.

T. J. EDWARDS,
Clerk U. S. Circuit Court, District of Nevada.

186 United States of America, ss.

The President of the United States, to the Honorable the Judges of the Circuit Court of the United States, for the District of Nevada, greeting:

Because the record and proceedings, as also in the rendition of a judgment of a plea which is in the said Circuit Court,

before you, or some of you, between the Southern Pacific Company, a corporation, plaintiff in error, and Asa M. Hamilton, defendant in error, a manifest error hath happened to the great damage of the said Southern Pacific Company, a corporation, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals in the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, State of California, on the 20th day of April, 1892, in the said Circuit Court of Appeals to be then and there held, that the record and
187 proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the 21st day of March, in the year of our Lord one thousand eight hundred and ninety-two.

T. J. EDWARDS,

Clerk of the United States Circuit

Court for the District of Nevada.

[SEAL]

Allowed :

THOMAS P. HAWLEY,

Judge.

District of Nevada, ss.

T. J. Edwards, being first duly sworn, on oath says : That he is a male citizen of the United States, over the age of twenty-one years, competent to be a witness in said cause ; that on the 23d day of March, 1892, he duly served the foregoing writ of error upon William Woodburn, Esq., one of the attorneys of record for said defendant in error, by leaving a copy thereof in a conspicuous place in the law office of said Woodburn, in Carson City, Nevada, at or about the hour of half past four o'clock P. M.,—said Woodburn then and there declining to accept service hereof.

T. J. EDWARDS.

Subscribed and sworn to before me this 23d day of March, 1892.

THOMAS P. HAWLEY,

U. S. District Judge.

188 The answer of the Judges of the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of Nevada, to the foregoing Writ of Error:

The record and all proceedings of the plaintiff whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within named, in a certain schedule to this writ annexed, as within we are commanded.

By the Court.

T. J. EDWARDS, *Clerk.*

[SEAL]

189 United States of America, ss.

The President of the United States, to Asa M. Hamilton, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, State of California, on the 20th day of April, 1892, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Nevada, wherein the Southern Pacific Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas P. Hawley, United States District Judge for the District of Nevada, presiding judge in said Circuit Court, this 22d day of March, A. D. 1892.

HAWLEY, *Judge.*

190 District of Nevada, ss.

T. J. Edwards, being first duly sworn, on oath says: That he is a white male citizen of the United States, over the age of twenty-one years, and competent to be a witness in said cause; and on the 23d day of March, 1892, he duly served the above citation upon William Woodburn, Esq., one of the attorneys for said Asa M. Hamilton, by leaving a copy thereof in a conspicuous place in the law office of said Woodburn, in Carson City, Nevada, at or about the hour of half-past four o'clock P. M.,—said Woodburn being then present, but declined to accept service hereof.

T. J. EDWARDS.

Subscribed and sworn to before me this 23d day of March, 1892.

THOMAS P. HAWLEY,
U. S. Dist. Judge.

